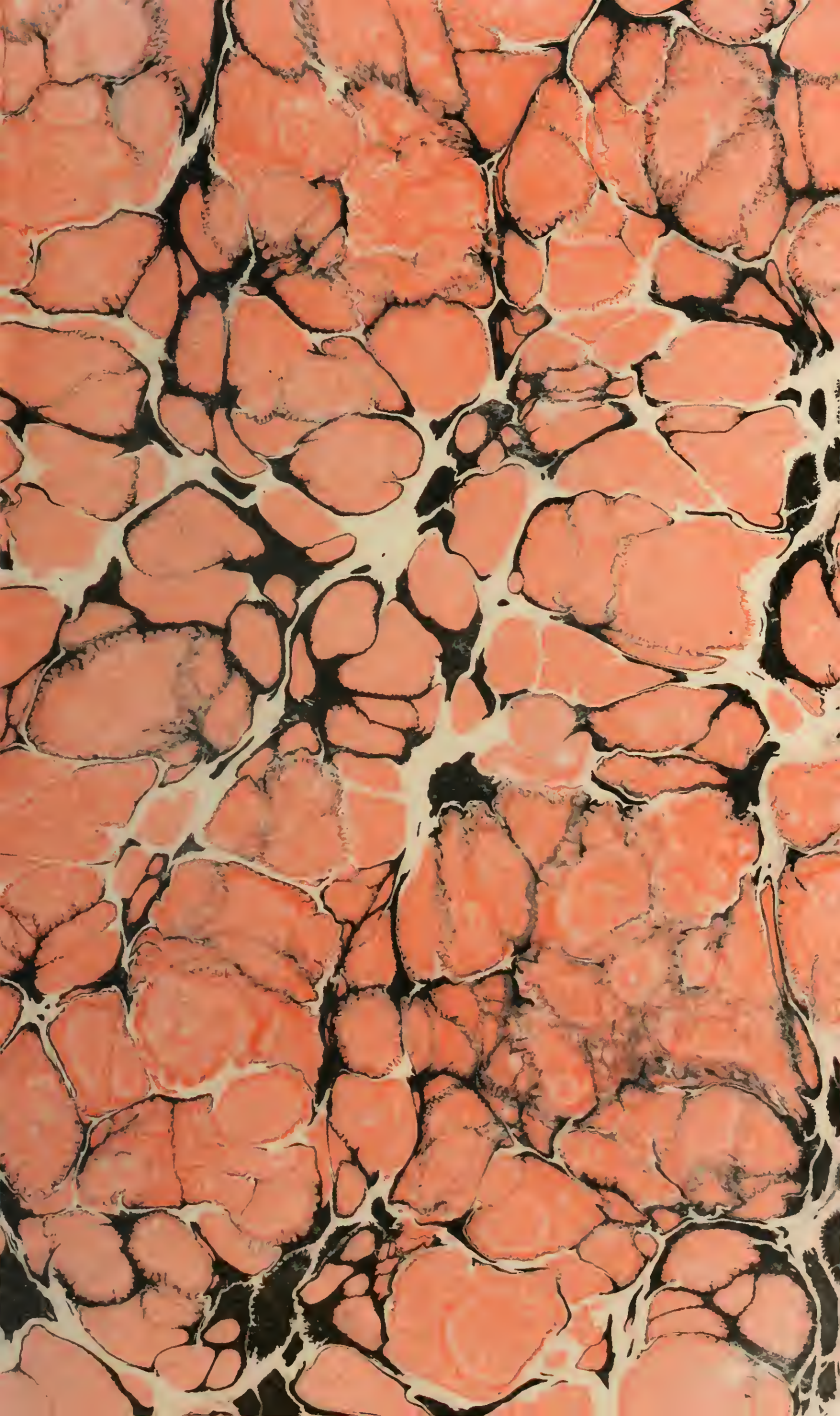

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THE CONSTITUTION, *Laws* and *Government*, OF ENGLAND, VINDICATED.

IN A LETTER to the Reverend

Mr. *William Higden.*

On Account of his

View of the Engliſh Conſtitution, with Reſpect to the Soveraign Authority of the Prince, &c.

In Vindication of the Lawfulneſs of Taking the Oaths, &c.

By a NATURAL BORN SUBJECT.

The Law is Good— but Sin taking occaſion by the Law, becomes exceeding Sinfull. Rom. vii. 11, 12, 13.

Thou ſhalt not follow a Multitude to do Evil: Neither ſhalt thou ſpeak in a Cauſe, to Decline after Many, to Wreſt Judgement. Exod. xxiii. 2.

I Counſel thee to keep the King's Commandment, and that in Regard to the Oath of God. Eccleſ. viii. 2.

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CONTENTS.

MR. Higden *do's not Justify the* Revolution, *yet Perswades* Complying *with it.*

Three Preliminaries.

1. *What he means by* Constitution. p. 5.
2. *What by* de Jure *and* de Facto. p. 6.
3. *How far he wou'd make* Precedents *an Argument.* ibid.

(1.) *What the* Constitution *is.* ibid.

1. *It is the* Legislative *Power.* ibid.
2. *Of the* King *and Three* Estates. *ibid.*
3. *The Three* Estates *Derive from the* King. p. 7.
4. *The Corruption of the* Parliament *of* Forty One. *ibid.*
5. *They run* Mad, *even to* Blasphemy, *upon the Notion of* Parliaments. p. 8.
6. *The Three* Estates *are not the* Fountain Constitution. *The Third* Estate *of the* Commons *not Admitted till the* 49. *of* Hen. III. *according to Dr.* Brady. p. 9.
7. *Not Settled as now long after that. The* Members *of former* Parliaments *Re-Summoned to make a New* Parliament, *without any New* Elections, *except in the Room of those that were* Dead *or* Sick. p. 10.

The King *Summoned more or fewer* Knights *and* Burgesses *as he thought fit. And* Named *those who should be Returned.* p. 11.

Disputes about Elections *Determined by the* King *and* Council. *ibid.*

8. *The* King *did* de Jure *Tax his* Demeasns. *And the City of* London *by the*

3,030. 204

the Advice of his Council. *p.* 11.
Sr. Henry Spelman *says ther were no* Commons *in the* Parliaments *of the* Saxons. *Nor of the* Normans, *from* Will. I. *to* Hen. III. *p.* 12.
King John *by his* Charter *Reserved to himself the Power of* Taxing *in some Cases.* p. 13.
The Commons *in* Parliament *then were none under those who held of the* King *in* Capite. *ibid.*
Several Acts of Parliament, *after* Hen. III. *Even as to Raising of* Taxes *without the* Commons. *p.* 14.
Receivers and Tryers of Petitions. *Each Order Taxed it self.* p, 15.
The Original of the Jurisdiction of the Lords *p.* 16.
9. *This no Breach of the* Constitution *While the* King *holds only of* God, *and is free from all* Coercion. *p.* 17.
Limitations of Concession *and of* Coercion. *ibid.*
Acts of Parliament *against the* Prerogative *are* Void. *ibid.*
The Supreme Power *fully Recognized to be in the* KING *alone.* p. 19.
10. *The* Commonwealth 1649, *a total Breach of the* Constitution *ibid.*
The Case if Oliver *had taken the Name of* King. p. 20.
11. *Mr.* Higden's *Argugument Consider'd as to the* Coining *of* Money. *p.* 22.
Oliver *and the* Regicides *despised the* Title *of* Possession. *Which is worse than that of the Power of the* People. *p* 23.
12. *A Plea for our* Ancestors *in those Times.* *p.* 25.

(II) De Facto *must have the* People *on its Side.* p. 25.
1. *And* de Jure *when it pulls down* de Facto. *p.* 26.
2. *The* Parliaments *own'd* de Jure *against* de Facto. *ibid.*
3. *Mr.* Higden *Quarrels the* Parliaments *for this.* ibid.
4. *Ther was none then thought that* Possession *alone gave* Right. *p.* 27.
5. *Nor do we Now.* p. 29.
6. *It woul'd Destroy the Doctrine of* Repentance. *ib.*
7. *It was Manifestly over-Ruled by the* Parliament 1660. *p.* 31.

S. And

8. *And by all the* Parliaments *both of* York *and* Lancaſter.

9. *The Caſe of Queen* Jane *ſtill a Proof of this, notwithſtanding the* Exceptions *of Mr.* Higden. *p.* 32.

10. *Our* Laws *ſuppoſe a* Poſſeſſion *to be* de Jure *in the Right* King, *even when he is* de Facto *out of* Poſſeſſion *by an* Uſurper. *p.* 34.

11. *Mr.* Higden's *Miſtake in Reck'ning* Thirteen *Kings from* Will. I. *to* Hen. VII. *who came not in by* Hereditary *Title. None Claimed by Bare* Poſſeſſion. *p.* 35.

12. *Of the* Non jurors *in thoſe Times. And his Miſrepreſentation of* Robert *Earl of* Glouceſter. *p.* 40

(III.) *He brings his* Precedents *from the Times of* Uſurpation. *p.* 43.

The Length of the Uſurpation *made it Neceſſary not to* Vacat *the* Judicial *Proceedings, nor the* Acts of Parliament, *on which they Depended.* ibid.

(1.) *Several* Acts of Parliament *which were not Right at firſt, yet have Obtain'd by Cuſtom, and the Allowance of our* Kings. *p.* 44.

(2.) Acts *of* Uſurpers *have been* Confirm'd *or* Annull'd. 1 Edw. IV. *particularly Conſider'd.* p. 47.

No Act *of any King* de Jure *either* Confirm'd *or* Annull'd. *p.* 50.

(3.) *It was not to be Expected that an* Uſurper *ſhou'd* Vacat *the* Acts *of Another for being an* Uſurper. *ibid.*

Two Caſes 1 *of* Hen. VII. *brought by Mr.* Higden *make both againſt him. And determin Abſolutly againſt* de Facto *being always* de Jure. *p.* 51.

(4.) *The* Judges *cannot Determin of the* Right *of the* Crown. *p.* 54.

(5.) *Mr.* Higden *thinks* Lawyers *and* States-Men *better* Cauſuiſts *as to the* Oaths *than* Divines. *p.* 55.

(6.) *He deſires but* One Inſtance *of what was done every Day, that is, Men Puniſh'd for Fighting for the*

the King *in* Poſſeſſion. *p.* 59.

(7.) *The* de Facto Deſcent *of the* Crown *do's not always Purge* Attainders. *p.* 61.

(8.) *The* Repeal 1 Edw. III. *Declar'd* Void *in* Parliament, *becauſe his Father* Edw. II. *was than Living.* ibid.

(9.) *The* Acts *of* Hen. VI. *after he took the* Crown *from* Edw. IV. *Judged* Void, *and are not Printed in our* Statute-Book. *p.* 65.

(10.) *An Excuſe for our* Anceſtors *in the Times of* York *and* Lancaſter, *which we have not.* p. 66.
And why the Pretenders *then did not take the* Regal Title. *ibid.*
Their Loyalty *then more Remarkable than at any time ſince.* p. 70.
The Example of Poland *at Preſent.* p. 71.
(11.) Parliaments *gave the ſame Cauſe* Back *and* Forward. *And always follow'd the* Sword. *p.* 72.

(12.) *Mr.* Higden *puts the* Legiſlative *Authority in the* King. *p.* 73.
No Conſtitution *will Suffer its* Authority *to be Diſputed.* p. 74.
Ther is no Judge *between* Competitors *for the* Crown. *ibid.*

(13.) *Of* Natural *and* Legal Allegiance *p.* 75.
Lord Chief Juſtice Coke *and* Hales *both under Temptation againſt the* Prerogative. *ibid.*
Anſwer to Mr. Higden's *Quotations from Lord* Bacon, Coke, Bridgeman, *and* Hales. *p.* 76.
The Argument Sum'd up in the Caſe of Queen Mary. p. 80.

(14) *The* Laws *are* Raviſhed *by every* Uſurper. *p.* 83.
The Reſtoration of K. Char. II. *was againſt the* Oaths *and* Laws *of* de Facto, *ibid.*
The Statute 1 Will. *and* Mary *Determins expreſly for* de Jure *againſt* de Facto. *ibid.*
Something Eſſential *to* Parliaments *p.* 86.
But Mr. Higden *ſays, the* de Facto Power *may Alter all* Rights, *even of the* Crown. *p.* 87.

(15) *The*

CONTENTS.

(15.) *The Right of the* Crown, *and its* Deſcent *is own'd by the* Law *to be from* God. *p.* 88.

Mr. Higden *won'd have a* Law *made againſt* Conqueſt *and* Uſurpation. *p.* 89.

(16.) *Some Account of the* Statute 11 *Hen.* VII. *p.* 91.

Mr. Higden *ſays ſome Kings* de Jure *ſince the* 1 *of* Jam. I. *have owned the* Legiſlative *Authority of Kings* de Facto. *He is Deſired to ſhew it.* p. 94.

(17.) *Mr.* Higden's *Miſtake in ſaying, they never Proceeded againſt thoſe who Fought for a* King *in* Poſſeſſion, *but only by way of* Attainder *in* Parliament. *p.* 94.

The Nation prefer'd Hereditary *Right to* Poſſeſſion. *p.* 96.

(18.) *The* Jews *Submitted when they were* Conquer'd, *but Reſcu'd themſelves when they Con'd.* p. 97.

Their Allegiance *was Due to the* Roman Emperors *in our* Saviour's *time.* p. 98.

(19.) *Mr.* Higden *makes very Short Work with the* Scriptures. *p.* 99.

(20.) *And as to the Doctrine of the* Church *of* England. *p.* 101.

(21.) *He brings in the* Whigg Cant *of* Kings *being made for the* People. *But dares not ſtand by it, and it do's him no Service. Only gives* Encouragement *to* Uſurpation *and* Rebellion. *p.* 103

(22.) *Every thing has* Right *but the* Crown! *A New* Goſpel *for* Kings! *p.* 104.

(23.) *The Behaviour of the Primitive* Chriſtians *to* Kings *in* Poſſeſſion. *p.* 106.

(24.) *An* Expoſtulation *with Mr.* Higden *upon the Whole. ibid.*

SUPPLEMENT.

SHEWING

I. DR. Wake's *Justification of what I have said concerning the* Constitution. p. 111.

II. *Mr.* Tyrrell's *Objections against it.* p 116.

Advertisement. *Concerning the* Jacobite *Converts.*

ERRATA.

PAge 4. l. 23. f. ta. r. at. p: 8. l. 6. f. *Grabled.* r. *Garbled.* p. 15. l. 20. r- *Parliament,* of which the Bishops were the Principal part, and were. p. 44. beginning of l. 5. put (1.) p. 85. l. 27. f. actually. r. actual. p. 105. l. 27. r: as to. In the Advertisement p. ult. l. 4. r. *Reasons.*

A

LETTER

TO

The Reverend

Mr. *William Higden.*

SIR;

YOU beſpeak in your *Preface* great *Charity* and *Moderation* in thoſe who ſhall Anſwer you. But not without a *Sting* if they come too near,

Animaſque in Vulnere ponunt.

Yet, Sir, I muſt venture, and freely tell you wherein I think you have overſhot the Mark.

You are come into the Government. But upon what Terms? You once thought it all a *Wickedneſs* and *Uſurpation*. And have you Alter'd your Mind? No. You ſtill think it was ſo. But you have found Reaſons that notwithſtand-

ing all that you ought to Comply with it. So that this is no Juſtification of the *Government*, but only of your own *Compliance*. And you are as Free to part with it to Morrow, if it keep not its Ground, and *Comply* again with whatever ſhall Riſe up in its Place. It cannot Sink down with me how any Man can be Hearty to Support that which he thinks a *Wickedneſs!*

Therefore the Government is not beholding to any *Convert* who ſhall come in otherwiſe than upon *Revolution-Principles*. For tho' he may Satisfy himſelf in it, yet if his Arguments prevail he will Unſettle Thouſands. I will not be ſo Uncharitable to Suppoſe you had this in your Deſign. But however it has the ſame Effect. And I think I may ſet this down as a Certain *Rule*, That whoever Sticks ſtill to his Old *Paſſive Obedience* Doctrin, cannot be a true Friend to the *Revolution*.

And this Appears in that *Unwillingneſs* with which theſe Men come in. And they go not an Inch farther than juſt they muſt for that time. Thus thoſe who took the firſt *Oath* with a *Declaration* ſhew'd that ſomething Stuck with them. And what was that? They wou'd not be thought to *Abjure* the *Right* of the *Diſpoſſeſſed* Prince. But I think he who *Marries* one *Wife* does *Abjure* all others. However they wou'd not have it ſo, and freely Declar'd againſt any *Abjuration*. Doctor *Stillingfleet* Wrote againſt it, and Made it not only *Inſignificant* but *Sinful*. But he Liv'd not till it was *Impos'd*, ſo we know not what he wou'd have done. But there were thoſe who *Voted* and *Argued* againſt it as *Unlawful*, and yet took it as ſoon as the Major *Vote* Carry'd it to be *Lawful*.

I obſerve that theſe Men draw not the *Concluſion* from the *Premiſes*, but firſt they fix a *Concluſion*, and then find out *Premiſes* that will Anſwer to it. Thus Dr. *Sherlock* having nothing in his View but the firſt ſhort *Oath* of *Allegiance*, Adapted his Arguments accordingly, and tho' he made it Lawful to Comply with the Government, yet he Reſerv'd a *Right* in the *Diſpoſſeſſed* Prince, which he might Recover if he cou'd. And made a Diſtinction between a *Right* by *Poſſeſſion*, a *Legal Right*, and a *Right* by *Inheritance*.

But the *Abjuration* Diſclaiming *any Right whatſoever*, you, Sir, were forc'd to come up to this, if you wou'd Comply.

Well, I muſt ſay it of the *Clergy*, whether *Compliers*, or *Non-Compliers*, whether it may be to their Juſtification or not, That they came in with the worſt Grace of any, they were brought to the *Oaths* as a Bear to the Stake, and have the leaſt Share in the Merit of the *Revolution*. Which they ſaid wou'd otherwiſe have overturn'd the *Church*, as was done in *Scotland* for the ſame Reaſon. Beſides that moſt now, being then young, took all upon Truſt.

You told us, Sir, in your *Preface* of the *Succeſs* your Papers met with while in *MSS.* which Encourag'd you to *Print* them. This made us hope for a plentiful Harveſt of the *Nonjurors* who wou'd have follow'd your Example. But as yet we ſee very little of it, and you ſeem to Stand Alone.

But if they come in upon your *Principle*; they had as good ſtay where they are. For I muſt tell you, That no Friend of the *Govern-*

ment, neither *Whig* nor *Tory*, are Pleas'd with it. They think it Calculated only for *Time-servers* and *Trimmers*, to whom none are *Criminal* but the *Unfortunate*

Title by *Inheritance*, *Election*, or *Conquest* in a just *War*, or *Possession* where none claims a better *Right*, all these we have heard of, and they are Intelligible. But bare *Possession* without *Right*, and against the Right *Heir* Claimant, and Obtain'd by Manifest *Injustice*, and contrary to the *Laws* of *God* and *Man*, is the most Unaccountable of any Plea ever was Advanc'd, and an Affront to any *Government* that is Supported by it, and not likely to gain Ground, while the Notion of *Right* and *Wrong* remains among Men! What! For *Right* to become *Wrong*, only because it Suffers *Wrongfully!* And *Wrong* to become *Right* by being still more *Wrong*, and *Improving* in *Wickedness*, without *Repentance*, and being fully *Harden'd*, after *Killing* to take *Possession!* Does this purge *Defects*, an dset all Right again!

You set up the *Crown* like the *Goal* ta *Prison-base*, the best Runner carries it. That if a *Jack Straw* with his *Mob* shou'd Surprize *Whitehall*, Seize the *King*, and Usurp the *Government*, it is all his own, he has Gain'd your Goal of *Possession*, and the *Right* of the Lawful *King*, and his *Heirs* is Extinguish'd for Ever! So that the *King* wou'd be a *Rebel* against *Jack Straw*, if he Sought to Recover his *Right!* But if he did Recover it, he might Hang King *Jack* for a *Traitor!* Every thing *Jack* did was *Treason* by the *Law*, and yet for Doing it, the *Law* Indemnifies him, and gives him the whole *Kingdom* for his Pains! Yet do's not *Indemnify* him

him becauſe it may Hang him for it afterwads! Sir, this is a Contemptible Notion of the *Law*. And the *Revolution* and the *Title* of the *Queen* which Depends upon it, needs no ſuch *Defences* as theſe. The *Whiggs* whom you deſpiſe, deſpiſe ſuch a *Plea* as this. They never ſaid, ther might not be a *Prevailing Wickedneſs*, and that *Juſtice* was to be Meaſur'd by *Succeſs*.

You make the *Revolution* an *Iniquity* Eſtabliſh'd by *Law*. And therefore plead Submiſſion to it. Which looks not like good *Divinity*, whatever *Law* ther may be in it. But I will not Prejudge.

Thus much in the general. I now come to your *Arguments*, which I will endeavour to underſtand if I can. Towards which I ſhall want your Help in the following Particulars.

1. To know what you mean by the *Conſtitution?* You make this your whole *Foundation*. And therefore it is neceſſary it ſhou'd be Diſtinctly and Clearly underſtood.

There are many *Frames* or *Conſtitutions* of *Government* in the World. And the ſame *Country* has undergone ſeveral *Frames*. Is it your Meaning then, That no *Frame* or *Conſtitution* of *Government* ought to be Submitted to but that which was firſt Eſtabliſh'd?

Or, *Secondly*, no *Alteration* in the *Conſtitution* but what was Regularly and Fairly made by the *Conſtitution* it ſelf?

Or, *Thirdly*, That a *Conſtitution* once *Settled*, is to be Obey'd, however Wrongfully it was brought in?

I will preſume for ſeveral Reaſons that you will pitch upon the *Third*. And that you will allow of *de Facto Conſtitutions*, as well as *de Facto Kings*.

2. Then the next thing is to know what you mean by *de Facto* and *de Jure?* In your Book you make *de Facto* to be always *de Jure.* So here is a *Distinction* without a *Difference.*

3. The third thing I wou'd know, is, Whether you make *Precedents* (which you take for your Argument) a Substantial *Rule* in all Cases? Otherwise they may be none in this.

This, Sir, is a short View of your *Hypothesis*, and of your *Defence* of it.

(1.) I will begin with the *Constitution.* And by this I suppose is to be Meant something *Standing* and *Perpetual*, which is not to be *Chopp'd*, or *Chang'd*, or *Alter'd*; but to Remain *Firm* and *Intire* it self, tho' it can *Change* all other things, all our *Laws*, *Customs*, and Inferior *Constitutions.* It is the *Primum Mobile*, Unmov'd it self, but setting every thing else in Motion. The *Fountain* whence all *Laws* and *Subordinate Authority* in the Nation flows. The *Streams* may take different *Channels*, but the *Fountain* still Remains the same.

1. And this is no other than the *Legislative* Authority, which is ty'd to no *Law*, but may *Enact* and *Repeal* at Pleasure. For the *Law* is nothing else but the Declar'd *Will* and *Pleasure* of the *Legislature.*

2. And this I suppose in *England* is Generally Understood to be in the *King* and the three *Estates*, that is, 1. The *Lords Spiritual*, 2. The *Lords Temporal*, and 3. The *Commons.*

These

Theſe are our *Conſtitution* in *Conjunction* with the *King*, and without theſe no *Law* is to be made. Thus it ſtands now.

3. But then we muſt ſay, *That from the Beginning it was not ſo.* For *Parliaments* were not from the *Beginning*. They were Call'd by *Kings*, and all the *Authority* that they have is Deriv'd wholly and ſolely from the *Crown*. So that they are not the *Original* and *Fountain CONSTITUTION.*

It is Certain that the Whole *Legiſlative* Authority in *England* was once in the *Crown*, as well as the *Property* in all the *Lands*. And to this Day all *Lands* are held of the *Crown*, and all the *Authority* as well *Parliamentary* as any other *Civil* Authority is Deriv'd from the *Crown*, and from it only.

GOD made *Kings*, and *Kings* made *Parliaments.*

4. Let no Man here Miſtake me, as if I was ſpeaking againſt *Parliaments*, No, I think them an Excellent Conſtitution; for *in the Multitude of Councellers ther is Safety.* And it is moſt Happy when the Publick Affairs are Carry'd on with the moſt Univerſal Conſent and Agreement.

But as the *Corruption* of the *Beſt* things is the *Worſt*, ſo when *Parliaments* Degenerate from their Original *Conſtitution*, they become the Authors of the Greater *Miſchief.* And we ſpeak not by *Gueſs*, but from Dear-bought *Experience.* The *Parliament* of *Forty One* began at firſt to *Contraſt* with the *King*, and

Diſpute his *Authority*. Then they ſet themſelves up as a Power *Co-Ordinate* and upon the Level with him: And at laſt they Aſſerted an Authority over him, to *Judge* and *Condemn* him. The Prevailing *Faction* in that Houſe of *Commons*, having firſt *Grabled* their own *Houſe*, and *Secluded* the Loyal *Members*, got the *firſt* of the three *Eſtates*, the *Biſhops*, turn'd out of the *Houſe* of *Lords*. And ſoon after Diſcarded, by their own Authority, all the *Temporal Lords*, and took the whole *Government* into their own Hands, and Created themſelves a *Commonwealth*, thus totally ſubverting the *Conſtitution*.

Then it was that any Number of Men getting into *St. Stephen's Chappel*, not only without any *Authority* from the *King*, but in Direct *Oppoſition* to him, cou'd *Vote* themſelves a *Parliament*, Deſpiſing the Old *Rules*, or to *Qualify* themſelves according to the known *Laws* then in being, but Men *Attainted* and who had Forfeited their *Lives* to the *Law*, cou'd ſit and *Vote* themſelves *Acquitted*, and true *Members* of that *Houſe*!

5. Nay, ſo *Mad* were they in thoſe Times upon the Notion of *Parliaments*, that *Baxter* in his *Saints everlaſting Reſt*, Printed 1649. p. 83. Deſcribes *Heaven* as a *Parliament*, with their *Speaker*, &c. and inſtead of the *Kingdom* of *God*, call'd it *Parliamentum beatum*. And in the *Veiw of the Governments of Europe*, by *T. R.* Eſq; Printed for *R. Baldwin.* 1689. p. 10. from theſe Words, *Let us make Man*, he Alludes, That *God Summon'd a Parliament*

of

of the Trinity. And I believe ther are many in *England* who think that a *Parliament* was the firſt *Government* in the *World.* Tho' I know not how they will find it in *Adam*, or where he or *Noah* call'd a *Parliament.* But the *Jeſuits*, *Presbyterians*, and all our *Republicans*, ſuch as *Parſons* alias *Doleman* the *Jeſuit*, *Knox*, *Buchanan*, *Milton*, *Sidney*, *Lock*, &c. who place the *Original* of *Government*, in the *People*, and make all to be *Commons* at firſt, muſt think that the *laſt Reſort* of *Government* is ſtill with them, and that the *Houſe* of *Commons*, as *Repreſenting* the *People*, have an Authority *Prior* and *Superior* to *King* or *Lords.* And ſo indeed they make the *Houſe* of *Commons* the only *Original* and *Unalterable CONSTITUTION.*

Therefore to Correct theſe *Exceſſes* (ſome of them *Blaſphemous*) it can be no Reflection upon the Juſt and Lawful Authority of *Parliaments*, or the *Priviledges* of the Honourable *Houſe* of *Commons*, to ſet this Matter in a Clear Light; it is a *Vindication* of them to be, what they Profeſs themſelves, *His* (or her) *Majeſty's moſt Dutiful and Loyal Subjects.*

6. The *Lords* and *Commons* are now Part of our *Conſtitution.* But they are not the *Fountain Conſtitution.* The *Lords* are all made by the *King*, and were his *Great Council* long before the *Commons* were taken in. Which was not (as Doctor *Brady* ſays, in his *Introduction to the Old Engliſh Hiſtory.* Printed 1684.) before the 49th of *Hen.* III. For in his Short *Introduction* to that *Book* he Affirms and Undertakes to Prove theſe two things,

" I.

" 1. That the *Commons* of *England* Repre-
" ſented by *Knights*, *Citizens*, and *Burgeſſes* in
" *Parliament*, were not Introduced, nor were
" one of the Three *Eſtates* in *Parliament* be-
" fore the 49th of *Hen.* III.

" 2. I affirm (*ſays he*) that before that
" time, the *Body* of the *Commons* of *England*,
" or *Freemen* (as now Underſtood, or as we
" now frequently call them) *Collectively* taken,
" had not any *Share* or *Votes* in making of
" *Laws* for the *Government* of the *Kingdom*,
" nor had any Communication in Affairs of
" State, Unleſs they were Repreſented by
" the *Tenants* in *Capite*.

The *Doctor* was *Keeper* of the *Records* in the *Tower*, and Quotes the *Parliament Rolls*, which are the *Fountain Proof* in this Caſe. And I hear not that he has been Detected in any *falſe Quotations*,

7. After the *Commons* were thus taken into *Parliament*, it was a long Time before they were Settled, and their *Elections* Regulated in that *Form* as now, or their *Authority* ſo *Aſcertain'd* or thought *Neceſſary*. Theſe things came by Degrees. The *Doctor* p. 152. ſets down at large a *Writ* of *Summons* to *Parliament*, 21 *Edw.* I. Wherein the *Sheriffs* were Commanded to Return the ſame *Members* that ſerv'd in the Preceding *Parliament*, and to make New *Elections* only where any of theſe Old *Members* were *Dead* or Diſabled by *Sickneſs*.

And

And p. 151. ther are other *Writs* Commanding the *Sheriffs* to Return *two Knights* beſides the *two* that were firſt Return'd. So that at that time the *King* was not Limited to any Certain Number of *Knights*. And p. 161. The *Writ* Commands but one *Knight* to be Return'd for a *County*, one *Citizen* for a *City*, and on *Burgeſs* for a *Burgh*; and the *Names* of thoſe to be Return'd are ſet down in the *Writ*, ſo that the *King* then had the Naming of them, when he thought fit. And in Dr. *Brady*'s *Continuation*, in the Reign of *Edw.* 1. p. 96. he Quotes the *Parliament Rolls*, where *four Knights* were Summon'd from every *Country*. And p. 98. one or two *Burgeſſes* to be Return'd, as the *Burgh* was Greater or Leſſer. So that at that time ther was no Fix'd *Rule* for the *Election* of *Parliament Men*, and it was left wholly almoſt in the *King*'s Breaſt.

And any Diſpute about *Elections* or the *Right* of *Elections* was Determin'd by the *King* and *Council* in the time of *Edw.* II. of which ther is a plain Proof in *Brady*'s *Introduction* p. 37, 38.

8. And as the *Elections* were in this Condition, ſo the Neceſſity of the Conſent of the *Commons* in *Parliament* to the making of *Laws*, or even as to the Raſing of *Money*, was not then known or taken for a General *Rule*. For ther were ſeveral *Acts of Parliament* made without the *Commons*, even after *Hen.* III. as Dr. *Brady* ſhews all were before. See the *Appendix* to his *Introduction* p. 49. &c. *Of the Great*

Great Councils and Parliaments before and after the Conqueſt.

Our Ancient *Kings* did *de Jure* Tax their Demeaſns. *Introduct.* p. 180.

The City of *London* Tax'd by the *King* with the Advice of the *Privy Council.* p. 178.

He gives a long Quotation out of *Spelman*'s *Gloſſary* upon the word *Parliament*, beginning at p. 231. And you find *Spelman* making this Obſervation, p. 232. *Nuſquam me reperiſſe inter SAXONES Noſtros PLEBI locum.* That in all the *Saxon Parliaments* ther were none of the *Commons.*

Then coming to the *Normans*, he ſays, p. 233, 234. That *William* the *Conqueror* gave all the *Lands* among his *Great Men* (the *Normans*) *terram totam inter Magnates Suos ſic diſpoſuit*, that the *Great Men*, or the *Magnates*, held of the *King* per *Baroniam*, *in Capite*, that is, from the *Head* the *King*, whence they were Call'd the *King's Barons* or the *Barons* of the *Kingdom.* And theſe *Barons* gave the Lands to others under them, to hold of them in *Military Service*, and thoſe again to *Tenants* under them for *Agriculture*, or what we call *Soccage.* The *Barons* in their *Courts* had full Authority over all theſe under them, to Decide all Controverſies among them, and give them *Laws.* And the *King* with the Advice and Conſent of his *Barons*, made *Laws* for the whole *Kingdom.* And *Spelman* ſays, *Ludunt qui Parliamenta Noſtra in his quærunt.* It is a Jeſt to ſeek for our *Conſtitution* of *Parliaments* in thoſe Times.

And

And he Adds, *Collegiſſe me Centenas*—— That of about a Hundred *Great Councils* (or *Parliaments*, if we will call them ſo) which he had Collected from the beginning of *Will.* I. to the end of *Hen.* III. he cou'd not find any thing *de Plebe*, of the *Commons*, among them all.

Then he ſpeaks of the *Charter* of King *John*, which the Rebellious *Barons*, having Subdu'd him, Forc'd him to Sign, wherein he Grants, that he wou'd not impoſe any *Tax* but by the *Common Council* of the *Kingdom*, for the Word *Parliament* was not then in uſe. Yet in this *Charter* (which Sir *Henry Spelman* ſaid he had ſeen) that the *King* might not ſeem to part with his whole *Prerogative*, ther are *Three* Caſes Reſerv'd wherein he did not Diveſt himſelf of the Power to Raiſe *Taxes* without Conſent of this *Common Council.* 1. To redeem his Perſon. 2. To make his Eldeſt Son a Knight. 3. For the Marriage of his Eldeſt Daughter. Only he Promis'd that theſe *Taxes* ſhou'd be Reaſonable.

But to ſhew what was meant by this *Common Council*, he Promiſes after in the ſame *Charter*, that for the Raiſing of *Taxes* (except in the *Three* Caſes before mention'd) he wou'd call the *Biſhops*, *Abbots*, *Earls*, and Great *Barons* of the *Kingdom*, and thoſe others who held of him *in Capite.* Which is far from the Notion of the *Commons* as Repreſented in our *Parliaments.*

And Sr. *Henry* obſerves, That after the *Commons* were let in to *Parliaments*, the Power of the *Barons* or *Great Men* Decreas'd, who only before were Able to raiſe *Rebellions* againſt the

Crown;

Crown; but then, says he, the *Commons* being Loos'd from their Subjection to the *Barons*, *Ecce novus jam Leviathan grassari cœpit*—— A new *Leviathan* of the *Commons* arose, who made Terrible *Rebellions*, which they never had done before. See this more at large in the *Introduct.* p. 235, 236.

But now from the End of the Reign of *Hen.* III. When the *Commons* came first into *Parliament*, according to Sr. *Henry Spelman* and Dr. *Brady*, their *Rights* and *Constitution* was not of a long time so *Settled* and *Ascertain'd* as at this Day. For we find after this several *Acts* of *Parliament*, even as to the Raising of *Money*, which were made by the *King* and *Lords* without the Concurrence of the *Commons*, as you will find in *Cotton's Abridgment of the Records.* Printed 1689. There p. 17. n. 6. and 19. n. 8. in the 13 *Edw.* III. The *Lords* grant *Aid* to the *King* for themselves, without the *Commons.* And the like 12 *Edw.* IV. p. 688. n. 9. And 13 *Edw.* IV. p. 691. n. 43.

An Imposition upon *Merchandize*, 21 *Edw.* III. by the *King* and *Lords* without the *Commons.* P. 53, 54. n. 16.

The 4 of *Hen.* VI. It is Decreed by the Assent of the *Lords*, that the Subsidy of *Tonnage* and *Poundage* granted *Conditionally*, shou'd be *Simply Paid*, *notwithstanding any Condition*, p. 584. n. 22.

21 *Edw.* III. An Imposition upon *Cloth* by *King* and *Lords* without the *Commons*, and against their *Petition.* p. 57. n. 31.

The *Bills* of the *Commons* were then by way of *Petition.* For the *King* and the *Lords* were the

Sole *Judges* in *Parliament*, the *Commons* only *Petitioners*. p. 392. n. 80.

And of these *Petitions* or *Bills* in *Parliament*, the *King* sometimes Granted *Part*, and Deny'd *Part*. p. 48. 57. 74. 138.

Again Granted with *Exceptions*, *Additions*, *Explanations*, or upon *Condition*, p. 39, 46, 48, 60, 62, 166.

And 17 *Rich.* II. ther are several *Acts* which were Enacted by the *King* with the Assent of the *Lords* only, p. 354.

Again the *Receivers* and *Tryers* of *Petitions* were in those Days a Part of the *Constitution* of *Parliament*, who might *Receive* or *Reject* any *Petition* to the *Parliament*. But this Authority was afterwards thought too Great, and a Bridle upon the *Parliament*, and is now wholly laid aside. As that *Committee* call'd the *Lords of the Articles* in *Scotland*, to the same Purpose, for *Trying* all *Petitions* to the *Parliament*, and was in being and Part of the *Constiiution* there till the first Year of the *Revolution*, and were laid aside without any *Act of Parliament* for it.

In those Old times it was likewise the Custom for every Order to *Tax* themselves. The *Lords* by themselves, as above in the 13 *Edw.* III. *&c.*

The *Knights*, *Freemen*, and *Communities* of *Counties* for themselves; and the *Burgesses*, and *Communities* of *Cities* and *Burghs* for themselves. As you may see in the *Rolls* of *Parliament* punctually Quoted by Doctor *Brady* in his *Continuation*, at the End of the Reign of *Edw.* II. p. 180.

And

And in the 15 *Edw.* II. *After the End of the Parliament*, the *King* Iſſu'd his *Writs* to the *Prelates* and *Clergy* to meet in a *Provincial Council* at *Lincoln*, to *Treat* of a *Competent Aid* to be Granted by them. In which *Writs*, as it were for a Direction, he *Recites* what the *Earls*, *Barons*, *Noblemen*, and the *Communities* of the *Kingdom* had Granted him in the *Parliament* at *York*. Ibid. p. 180, 181.

It was not then Objected, That the *Convocation* could not ſit after the *Parliament*, or without the *Parliament*, which was made the great Clamour againſt the *Canons*, 1640.

The *Biſhops* and *Clergy* Enjoy'd this *Privilege* of *Taxing* themſelves, till Interrupted by the *Rebellion* of *Forty one*, and the *Uſurpations* that follow'd, till the *Reſtoration*. 1660. But this *Privilege* was not Reſtor'd to the *Church*, and the *Clergy* have been ever ſince *Taxed* in Common with the *Laity*. Tho' ther is a *Salvo* for their *Right* of *Taxing* themſelves, only for the preſent *Neceſſity* and till things cou'd be *Settled*—— But it has far'd like other *Salvoes* for *Right* againſt *Fact*, the *Facts* grow into *Precedents* againſt the *Right*.

But notwithſtanding all theſe Ancient Cuſtoms, it has now obtain'd, that as the *King* lays on no *Tax* but by Common Conſent of all the three *Eſtates* in *Parliament*; ſo none of the *Eſtates* can *Tax* themſelves, but it muſt be by the Joint Conſent of the Whole. And ſo ſtands our *Conſtitution* at this Day.

Again *Appeals* lay Anciently from all *Courts* to the *King* in Perſon, ſome he heard himſelf, in others he *Delegated* whom he thought fit, commonly

commonly *Lords*, to Examine and Report to him. And in ſome Caſes he referr'd it to the *Houſe* of *Lords* to *Hear* and *Determine*. Which laſt obtaining by Cuſtom this *Juriſdiction* came to be Settl'd on them, and is now Part of our *Conſtitution*. See Book Caſe 22 *Ed.* III. n. 3. and *Parliament Roll* 25 *Ed.* III. n. 4.

9. If you aſk whether theſe things are not an Altering or Breach of the *Conſtitution?*

I think not. For while the *Fountain Conſtitution* ſtands Secure, any various Runnings of the *Rivulets* are no Breach of the *Conſtitution*.

Thus while the *Crown* is Declar'd to Hold only of *God*, and to be in no *Earthly Subjection* as by the 16 *Rich* II. c. v. And to be Abſolutely free from all *Coercion*, and ever to have been ſo by the *Fundamental* Law of this *Realm*, as by 12 *Car.* II. c. 30. the *Fundamental* or *Fountain Conſtitution* is preſerv'd *Inviolable*.

The *King* may Grant *Limitations* of *Conceſſion*, as *God* does with Men when he makes *Covenants* with them. And this takes not away his *Power* or *Authority*. But if the *King* ſhou'd Grant any *Limitation* of *Coercion* againſt Himſelf, the *Grant* muſt either be *Void*, as *Contradictory* in it ſelf: Or otherwiſe he *ipſo facto* is *Un-king'd*, and the *Conſtitution* broke to pieces.

But if we ſuppoſe him ſtill to be *King*, then the *Grant* is *Void*, even tho' it were paſs'd into an *Act of Parliament*. For it is a *Maxim* in our *Law*, *That an Act of Parliament Deſtructive of the Prerogative is Void*, as being Contradictory to the *AUTHORITY* which made

it. For how can any thing Destroy that *Authority* by which it self stands? And this is supported too by *Acts of Parliament*. By the 17 *Edw.* III. the *Statute* made at *Westminster* the 15 *Edw.* III. was *Utterly Repeal'd, and to lose the Name of a Statute, as Contrary to the Laws and the Kings Prerogative.* Cotton's Abridg. p. 38. N. 23.

And the 15 *Rich.* II. it was Enacted that the *King* should enjoy his *Prerogative* as largly as any of his Progenitors, *Notwithstanding any Statute.* And the Statute of *Glouceſter* particularly, made in the time of *Edw.* II. was *Utterly Repeal'd*, as Encroaching upon the *Prerogative*. Cott. Abridg. *p.* 342. N. 13.

And so it wou'd be at this Day, if an *Act of Parliament* were made any way Retrenching the Power of *Parliaments*, it wou'd be *Void*, as *Contradictory* in it self.

My Lord *Bacon* puts it among the *Maxims* of the *Law*, *Suprema Potestas seipsam Dissolvere potest*, *Ligare non potest*. That the *Supreme Power* may *Dissolve* it self, but cannot *Limit* it self. For while it is *Supreme* it cannot be *Limited*, else it cou'd not be *Supreme*. And the same *Authority* which *Enacts* can *Annull*. And where *Inferiors* wou'd *Limit* their *Superior*, their *Acts* must be *Void*, because they can have no such *Authority*.

Therefore any *Act* contrary to the *Original* and *Fountain Constitution* is *Void*. The *Constitution* stands, but the *Act* falls. And while the *Constitution* is Preserv'd free from *Coercion*, it is *Supreme* and *Intire*. And this *Supremacy*

we

we *Swear* to be in the *King*, his *Heirs* and *Lawful Succeſſors*.

And becauſe the Power of the *Sword* is the *Supreme* Power, therefore it is Recogniz'd, that The Sole Supreme Government, Command and Diſpoſition of the Militia, and of all Forces by Sea and Land, and of all Forts and Places of Strength, is, and by the Laws of England ever was the Undoubted Right of his Majeſty, and his Royal Predeceſſors, Kings and Queens of England; and that Both or Either of the Houſes of Parliament cannot, nor ought to Pretend to the ſame; Nor can, Nor Lawfully may Raiſe or Levy any War Offenſive or Defenſive againſt his Majeſty, his Heirs and Lawful Succeſſors. 13 Car. II. c. vi.

I have ſaid thus much of the *Conſtitution*, that we be not Deceiv'd with *Words*, and think every *Crack* or *Flaw* in the *Adminiſtration* a *Change* of the *Conſtitution*. A *King* may be *Slack* or not know his *Authority*. He may *Yield* too much, and Confound his Affairs, as King *Car.* I. did, and *Rebels* may grow too *Strong* for him. But while we have a *King* ſecur'd by the *Laws* from *Coercion*, and the *Hereditary Succeſſion* duely Settled, we cannot ſay the *Conſtitution* is *Broken*, tho' it may be much *Shatter'd*.

10. Indeed when the *Commonwealth* was ſet up in 1649, the *Conſtitution* was Intirely *Broken*, and Rooted up from the very *Foundation*. Tho' they ſaid it was only a ſmall Alteration in the *Form*. For none will own they Break the *Conſtitution*. But it was a *de facto Conſtitu-*

tion. And this I began upon, and now *Ask* from you Mr. *Higden*, Whether a *de Facto Constitution* is not as much to be Submitted to and own'd as a *de Facto King*? They are both equally *Right*, and equally *Wrong*. And the same Arguments for the Good of the *People*, and that ther be an End of Conteſt, hold in the one Caſe as well as in the other.

And if *Oliver* their *Protector* had taken the Name of *King*, it wou'd not have Reſtor'd the *Conſtitution*, while King *Char.* II. or any of his two *Brothers*, or any nearer to the *Crown* than *Oliver* did Claim. For our *Conſtitution* is not only *Monarchy* but *Hereditary* too, and we are *Sworn* to Both.

Oliver was as much a *King* as if he had taken the *Title*, for his *Power* was the ſame. *Protector* is as good a Word. And I hope we think not there is a *Charm* in the *Syllables*. It is *Children's Play* to Diſpute about *Words*, it is the *Thing* we Contend for. Our *Kings* had once the *Title* of *Grace*, then of *Highneſs*, and at laſt of *Majeſty*, but did this make any Alteration in their *Power*? And ſuppoſe they ſhou'd take a new *Name*, of *Emperor*, *Cæſar*, or *Czar*, of *Ruler*, or *Governor*, or *Leader*, or *Duke* which is the ſame, wou'd that make their *Authority* either more or leſs? Our *Kings* were call'd only *Lords* of *Ireland* till 33 *Hen.* VIII. were they not therefore as much *Kings* of it as afterwards? The *Czar* is call'd *Duke* of *Muſcovy*, but he is as much *King* there as in *Ruſſia* where he has the Name of *Emperor*. Has the *Duke* of *Brandenburgh* one bit of *Soveraignity* more ſince he took the Title of *King* of *Pruſſia*? The

Dukes

Dukes of *Savoy*, *Tuscany*, &c. are as much *Sovereigns* as if they had the Name of *Kings*. And *Oliver* was as much a *Soveraign* as any of them. We gave *Philip* the Title of *King* of *Spain* for a good while. But have we not taken it from him again? What signify *Titles?*

But if Old *Oliver* had understood your *New Doctrin*, Mr. *Higden*, it wou'd certainly have Determin'd him to have taken the Name of *King*, when his Ambition prompted him to it. For, according to *You*, it wou'd have brought him within the Purview of the 11 *Hen.* VII. and made him a *Lawful King*. And then all that Asserted the *Right* of K. *Char.* II. against him, had been *Rebels* and *Traitors* with Mr. *Higden*. The Descent of the *Crown* had Purged all *Oliver*'s Defects, the *Laws* had then been on his Side, and the *Constitution* had *Deserted* to *Him*!

But he was a *Bashful* Sinner, and for want of going one Step further, and stealing the *Title* as well as *Dominions* of his *Prince*, he Lost all; the *Hereditary Right* still remain'd, and he and his Accomplices stand Branded to Posterity by the Name of *Wretches*, *Desperately Wicked*, and *Fanatick Miscreants*, in the Statute 12 *Car.* II. c. 30.

Instead of all which, if he had proceeded in his *Injustice*, and added one *Wickedness* to another, by Assuming the *Royal Character*, and Broke the *Laws* throughout, he had then been a *Just* and *Lawful King*, and had stood in our *Annals* by the Name of *Oliver* I. And wou'd have been called a *Glorious Deliverer!* All this had been, according to Mr. *Higden*,

if when he had *Vacated* the *Throne* by the Murder of the *King*, and Baniſhing his *Heir*, he had Stept into it himſelf: He had then been *Rightful* and *Lawful*, and in a Condition to Summon *Parliaments*, to Remove the Ancient *Land-Marks*, to *Enact* and *Repeal* at Diſcretion! Thus *Wrong*, if you go far enough in it, becomes *Right!* As a Man may ſail *Weſt*, till he comes to the *Eaſt* at laſt.

If the Woman of *Samaria* had call'd her *Paramour* her *Husband*, ſhe had been Safe, by this *Doctrin!*

Monmouth ſeeing what *Oliver* had Loſt by his *Modeſty*, caus'd himſelf to be Proclaim'd *King*. And if he had *Succeeded*, wou'd have been as Good a *King* for Mr. *Higden*, as any *Hereditary Monarch* in *Europe!*

11. His Reign was too Short to *Coin* Money. But *Oliver* did it and the *Commonwealth* of *England*, with their own *Image* and *Superſcription* upon it; which you, Mr. *Higden*, make a Full and Indiſputable *Title* to the *Obedience* of the *Subject*, without any further Enquiry, and Quote *Grotius* and *Ariſtotle* his *Criticiſms* of νόμισμα Money coming from νόμος the *Law*. Whence to Adulterate the *Coin* is reckon'd amongſt *Treaſons*. And if you had liv'd then, and Adulterated their *Coin*, you might have found it ſo. For why ſhou'd they who had *Uſurp'd* every Part of the *Soveraignity* Stick at that of *Coining?* They Aſſum'd the whole *Soveraignity*. And as ſuch, they were *Own'd* and *Treated* with *Abroad*, *Recogniz'd* and *Obey'd* at *Home*. Only ſome wou'd Trifle about the Word *King*. You wou'd not have had the *Commonwealth* to have taken that *Name!*

Name! And their *Image* and *Superſcription* upon their *Coin*, and *Oliver*'s, afterwards wou'd have Determin'd your *Allegiance* to them, if you had liv'd then, and been of the ſame *Principles* you Profeſs now. You think this ſo *Material* an *Argument* and *Deciſive* in this Point, that you ſpend from p. 89. to p. 94. upon it, to ſhew that our *Allegiance* muſt follow the *Coin*. It generally do's indeed—— But this wou'd have Deceiv'd one, while the late King *James* was in *Ireland*, and his *Coin* current here, to have ask'd, *whoſe is this Image and Superſcription?*

But, Sir, this Argument about the *Coinage* was made uſe of by Dr. *Sherlock*, and is Subſtantially Anſwer'd in *Dr.* Sherlock's *Caſe of Allegiance Conſider'd, with ſome Remarks upon his Vindication.* Printed 1691. p. 59. to 62. to which you have made no Anſwer. And it is ſtrange that you have not Conſulted what your late Brethren have Wrote upon the ſame Argument you ſet up, before you had Determin'd your ſelf to the other ſide, in ſo very Important a Cauſe, and for which you had *Suffer'd* ſo long, by loſing *Time* and *Expectations.*

No more can be Infer'd from *Coinage* but *Poſſeſſion.* Which is a full *Right* where ther is no better *Right*, as in the Caſe of the *Roman Emperors* in our *Saviour*'s time. But *Oliver* and the *Regicides* Deſpiſed the Title of *Poſſeſſion.* They pleaded the *Right* of the *People* to Judge and Condemn their *King*, and Reſume that *Authority* which they Pretended he held by their Commiſſion, and had Forfeited to them

by breaking the *Original Contract*. See *King* Charles *his Case. Or, an Appeal to all Rational Men, concerning his Tryal at the High Court of Justice. Being for the most part that which was intended to have been deliver'd at the Bar, if the King had Pleaded to the Charge, and put himself upon a fair Tryal.* By *John Cook* of *Grays-Inn*, Barrister. *Printed*, 1649. This *Cook* was *Sollicitor* against the *King* at his *Tryal*, and Suffer'd with other *Regicides* after the *Restauration*. And in this *Argument* of his, he says, p. 21. *Possession is a vain Plea, when the Matter of Right is in question, for Right can never dye.* The Notion of *Possession* extinguishing *Right* was Abhorrent even to These! And indeed it has something in the *Consequences* of it more Fatal to *Human Society*, and to all good *Principles*, than even the Pretence of the *Power* of the *People*, which *Murdered* K. *Char.* I. For that is a *Principle*, (be it Good or Bad) and there is something to be *Pleaded*, something to be *Prov'd* in it, as you see they here brought the *King* to a *Tryal*, and had *Witnesses* ready to be Examin'd against him, and he had Liberty to make his *Defence*. But the *Principle* of *Possession* giving *Right* being once Admitted, ther Remains no other *Principle* in the World, no *Right* or *Wrong*, no *Just* or *Unjust*, no *Proof*, no *Examination*, no *Tryal*! But if you Thrust out a *King* (no Matter How) and Refuse to Hear any *Defence* he can make, his *Right* and of all his *Heirs* is Immediately and for ever *Extinguished*, and becomes the *Right* of those who have *Dispossess'd* him against all *Right*! This is *Rapite*, *Capite*, *Catch* who

Catch

Catch can, *Rob*, *Murder*, *Steal*, all is your own you can Carry off!

12. And here, Sir, I wou'd Plead for a little of that *Regard* you Contend for so Movingly, p. 6. and 7. to be paid to our *Ancestors* who submitted to *de Facto Kings* in the times of *York* and *Lancaster*, Not *to think there should be None who Understood the Constitution and their Duty, or had Virtue enough to Suffer for it.* For this wou'd be, as you say, *to entertain a very mean, or a very Hard Opinion of our Ancestors. In Modesty, we cannot but allow them to Understand what the Constitution was in their own times.* And shall not we, Sir, have as much Deference for our more Immediate *Ancestors*, your *Father* and Mine, Sir, who did not Understand *de Facto Constitutions* in their time, and had the *Virtue* (as we Us'd to call it) to *Suffer* for it? But now we must make them all *Fools*, or Worse!

Besides, those long ago were our *Popish Ancestors*, who had the *Pope* to Solve their *Consciences*, and he was Generally on the *de Facto* Side. If we Blame them for being thus Blindly led by him, then do we not Accuse our *Ancestors* of *Ignorance*? Nay, we have had *Heathen Ancestors* too, But *Truth* and *Religion* must not be Measur'd by our *Ancestors*. This is an Argument for *Women* and *Children*. To move *Passions*, rather than Convince *Reason*.

(II.) I come now to *de Facto* and *de Jure*. You say it was *Common Usage*, that is, *Common Law*, to Submit to *de Facto Kings*. You

are

are Certainly, Sir, in the Right of it. Nay, I will tell you more, it was Impoſſible to be otherwiſe. For none cou'd be *de Facto*, unleſs the *People*, and the *Major* Part too, at leaſt the *Strongeſt* were of his Side.

1. But then you muſt Allow me, That it was *Common Law* or *Uſage* likewiſe for *de Jure* to pull down *de Facto*, and the *People* muſt Join in this too. And you give many Inſtances of it your ſelf. So that the *Common Uſage* runs not all on your Side, as you think; and you are ſo ſure of it, as to Ask, p. 49. but *one Inſtance* againſt it *in all our Laws or Hiſtory.*

2. If the Notion of *de Facto* being likewiſe *de Jure* had been ſo the Common and Receiv'd Notion as you ſay, what an Eaſy Anſwer had the *Parliament* to give to *Richard* Duke of *York*, when he put in his Claim for the *Crown*, before the *Parliament* of *Hen.* VI. he being then preſent and Actually upon the *Throne?* Might they not have ſaid to *Richard*, do you not ſee *Henry* upon the *Throne?* And *de Facto* is *de Jure.* Then what have you more to ſay? But inſtead of that they *Declar'd*, upon *Richard*'s ſetting forth his Proximity of Blood, *That his Title cou'd not be Defeated.*

3. I know, Sir, you call this a *Partial Declaration*, and Labour to Prove it from p. 53. to 58. But, Sir, all the Uſe I have to make of it is to ſhew, That *de Facto* being always

de Jure

de Jure was not the Receiv'd Notion of thoſe Times. And againſt this you have ſaid nothing.

Nay, you own the Cauſe goes againſt you, upon this Point, while you find fault even with *Acts of Parliament* for *Attainting* of *Uſurpers* and thoſe who Adher'd to them. You call theſe *Attainders*, p. 36. *Stretches beyond Law, in the Heat of the Victor's Rage againſt his Rival.* And you ſay plainly, p. 53. That the Diſtinction of *de Jure* and *de Facto* was *Miſapply'd* in the Statute 1 *Edw.* IV. But you are very Free and ſay, p. 57. *This Declaration of Parliament proves too much, and therefore proves nothing at all.* And ſpeaking of *Acts of Recognition* you, ſay, p. 76. *In which Parliaments have ever been Liberal of their Expreſſions.*

4. This is an Eaſy way, Sir, to put off *Acts of Parliament*! Will you Allow the ſame Liberty as to thoſe Quoted on your ſide? But let the *Parliament* be Faulty which way it will, Yet this is Clear on Both ſides, That *de Facto* and *de Jure* being the ſame thing, was ſo far from being the *Comon Notion* of thoſe Times, that it was as *Singular* then as it is Now. I do not think ther was one Man in all *England* of your Opinion, Mr. *Higden*, during the Diſpute of *York* and *Lancaſter*, which is the Time whence you bring your *Precedents*, and whereon you Build your *Hypotheſis*, and wou'd perſuade Us that it was the Opinion of every Man at that Time. For how cou'd it be their Opinion, or of any one of them, when every *Battle* that was fought

fought was againſt the King in *Poſſeſſion*, on behalf of him who Pretended to have the *Right*? You know that both *York* and *Lancaſter* did Pretend to be next in *Blood* to the *Crown*, and ſo to have the *Right*. But neither of them thought this *Right* cou'd be Extinguiſh'd by *Poſſeſſion*, for Each of them fought againſt the Other who had got into *Poſſeſſion*, and ſet up his *de Jure* againſt the Other's *de Facto*. Cou'd any of them then think that *de Facto* and *de Jure* were the ſame, or that the *Right* was Extinguiſh'd by *Poſſeſſion?*

If this had been the Current Notion, why wou'd the *Uſurpers* after they had got into *Poſſeſſion* be ſo Sollicitous for *Reſignations* from the Depoſed *Princes*? As in the Caſe of *Edw.* II. and *Rich.* II. And even not to think themſelves ſecure in theſe forced *Reſignations* (tho' they made them ſay they did it *Willingly* and *Freely*) till they had taken the *Lives* too of theſe *Kings* who once had *Right*. They wou'd not truſt to the *Extinguiſhing* by *Poſſeſſion*. Which they might ſafely have done, if the Notion had been ſo *Univerſal* and even to be the *Common Law*, as you ſay, Mr. *Higden*.

Can you Name any *King* ſince the *Conqueſt* who did not Pretend ſome *Right* beſides *Poſſeſſion?* Even *Rich.* III. did pretend that the Children of *Edw.* IV. were Illegitimate. And as Great a Monſter as he was, he wou'd not have *Murdered* the poor Young *Princes* his Nephews, if he had thought *Poſſeſſion* alone a good *Title*.

5. Pray,

5. Pray, Mr. *Higden*, what do you think of our *Kings* and *Queens* taking the *Arms* of *France*, and the Style of *Kings* and *Queens* of *France*, calling *Lewis* only the *French King*, or the *Moſt Chriſtian King*, to Avoid calling him *King* of *France?* Is it not to Preſerve what we think our *Right* againſt a very long *Poſſeſſion*?

Suppoſe this *French King*, or any other *King*, ſhou'd take any of our *Countries* from Us, wou'd not we think our *Right* a juſt Cauſe of War againſt his *Poſſeſſion?*

Do we not think ſo in our War againſt *Philip* of *Spain?* For he was in Quiet *Poſſeſſion* of all *Spain* when We ſet up the *Right* of *Charles* againſt him. Do we think then that *Poſſeſſion* does Extinguiſh *Right?*

It it does, then the *French King* has a Juſt *Right* to all his *Conqueſts*. And it is againſt *Right* to ſeek to Recover them.

Unleſs you Mean, That *Poſſeſſion* giving *Right* is a *Privilege* only to the *Uſurpation* of *Rebels* againſt their Natural *Soveraign*, as being the Moſt Juſt and Conſcientious *Conqueſt* that is Poſſible to be Made! And that none can keep a *King*'s Country from him but his *Subjects*, which is ſome Favour!

6. But, Sir, I know you Condemn all *Uſurpation* and *Rebellion*. Your Book ſays ſo plain enough, and that you think theſe Heinous *Sins* and of the firſt Magnitude.

That which I wou'd know then is, Whether this Great *Sin* ought not to be *Repented* of? And if you were *Confeſſor* to ſuch an *Uſurper* (ſuppoſe *Oliver* or any other) wou'd you not

not Exhort him to *Repentance?* And what *Repentance* without *Reſtitution?* For *Non dimittitur Peccatum niſi reſtituatur Ablatum.* Wou'd you give him *Abſolution* if he wou'd not *Repent* and *Reſtore?* And is it Poſſible that he ſhou'd be Oblig'd to *Reſtore*, and yet the *Conſcience* of all the *Subjects* be Oblig'd to Support him in his *Uſurpation?* Will he be *Damn'd* for not *Reſtoring*, and will they go to Heaven for Maintaining him in his *Unjuſt* Acquiſitions?

But he cannot *Reſtore.* For none can *Reſtore* but to the *Injur'd* who have the *Right.* And Mr. *Higden* has *Extinguiſhed* the *Right* of the *Diſpoſſeſſed.*

And I think taken away the *Injury* done him too. For ther is no *Injury* where ther is no *Reparation* due, when it may be made. And *Reparation* is due only where ther is an *Injury.*

So that by this it is no *Injury* to *Kill* the *King* and Seize his *Dominions!*

To kill any other Man is *Murder*, but the Deſcent of the *Crown* purges this in an *Uſurper!*

And *Rebellion* is an *Injury* only where it is *Little*, and Robs the *King* of a *Share.* But if it takes *All*, it is no *Injury* at all!

But if to Avoid this you ſay, That the *Uſurper* is Bound in *Conſcience* (tho' not by *Law*) to make *Reſtitution*, then you own a *Right* in the *Diſpoſſeſſed Prince* or his *Heirs*, which overthrows your whole *Hypotheſis.* And that *Right* can be no other than a *Right* to the *Soveraignity*, and conſequenty to the *Allegiance*

of

of all the *Subjects*, which Neceſſarily follows the *Right* of the *Soveraignity*.

7. And if you will take the Judgment or Authority of the *Parliament* 1660, King *Char.* II. was True and Lawful *King* from the Day of his *Father*'s Death, tho' others were in *Poſſeſſion* all that While. And he gave *Commiſſions*, *Pardons*, and *Grants* when he was in *Exile*, and all other *Regal* Acts that he had opportunity to do. And theſe were never Queſtion'd for his being then out of *Poſſeſſion*. But on the other hand the *Acts* of the Uſurping *Poſſeſſors* and their *Paliaments* were Declar'd Null and Void, for want of Sufficient *Authority* in the *Enactors*, and becauſe their *Poſſeſſion* was Contrary to *Right*. They cou'd not think then that every *Poſſeſſion* gave *Right*, or that *Right* was Extinguiſhed by an Uſurped *Poſſeſſion*.

Prince *Oliver* was *Hanged* and his *Head* ſet up for his Uſurped *Poſſeſſion*.

Queen *Jane* was Beheaded for the ſame.

8. And ther was not one *King* of the Houſe of *York* or *Lancaſter*, during their Diſpute, but who was *Attainted* for being only *de Facto*, by the other ſide who ſaid they were *de Jure*. Thus *Hen.* IV. V. and VI. were *Attainted* by *Edw.* IV. Who was likewiſe *Attainted* by *Hen.* VI. And *Rich.* III. was *Attainted* by *Hen.* VII. And all this was done by *Parliament*. Which if it be the *Conſtitution*, then how can a King *de Facto* be a King by the *Conſtitution*, when the

the *Conſtitution* Attaints him for being a King *de Facto?*

Hen. IV. was Attainted by the Name of *Henry* of *Darby*, and *Rich.* III. by the Name of *Richard* Duke of *Glouceſter*. Which ſhews that tho' they did Aſſume the *Royal* Style, *de Facto*, yet that it did not *de Jure* belong to them.

9. You except againſt the Inſtance of Queen *Jane*, and ſay, p. 68. That She was not Queen *de Facto*, but *in Fieri*. Why? What did ſhe Want? You ſay, *She had no Recognition by Act of Parliament.*

Then it ſeems ther is ſomething elſe needful beſides *Poſſeſſion* to give a *Right*. Nay, to make a *de Facto*. For Q. *Jane* had *Poſſeſſion*, and yet you ſay ſhe was but *in Fieri*. The Duke of *Northumberland* Pleaded the *Great Seal* of the Queen *de Facto*, and Order of her *Privy Council*. The *Judges* did not ſay ſhe was only *in Fieri*, they Allow'd her to be *de Facto*; but their Anſwer was, *That the Great Seal of one that was not Lawful Queen, could give no Authority, nor Indemnity, to thoſe that Acted on ſuch a Warrant.* Dr. *Burnet's Reform* Part II. p. 243. who tells Us *ibid.* p. 257. That *Cranmer* Arch-Biſhop of *Canterbury* (and others) were Attainted by Parliament for Adhering to Q. *Jane*. Yet his *Biſhoprick* was not Declar'd *Void*, nor he *Depriv'd* till it might be done *Canonically*.

And ther wanted not Pretence for Q. *Jane*, becauſe Q. *Mary* was Declar'd *Illegitimate* by *Act of Parliament*. But that Signify'd Nothing,

thing, nor did Excuſe any who Acted against Her.

And as to Q. *Jane* not being *Recognized* by *Parliament*, it was only becauſe ther was not time for it.

Neither had Queen *Mary* at that time any *Recognition* by *Parliament*. And if this be Neceſſary to make a *King* or a *Queen*, then neither *Mary* nor *Jane* were *Queen*'s at that time. And then it was very hard upon the Duke of *Northumberland* and others who were Arraign'd and Executed as *Traytors* to *Mary* before ſhe was a *Queen*.

As *Watſon*, *Clerk*, &c. were for a Conſpiracy againſt King *Jam.* I. before his firſt *Parliament* in *England*. *Watſon* pleaded it cou'd not be *Treaſon*, becauſe the *King* was not then *Crown'd*. He was *Crowned* on St. *James* Day, *July* 25. 1603. And his firſt *Parliament* did not Meet till the *March* following. So that *Recognitions* of *Parliaments* are not neceſſary to make *Kings*. Our *Law* ſays, *the King never Dies*. And *Recognition* is Acknowledging a *Right* that was before.

However the Lady *Jane* was Equal to the Lady *Mary* in this Point. But in all others ſhe far Exceeded her, except only that of *Right*. For the Lady *Jane* was Proclam'd *Queen* at *London*, and Own'd by all the Face of *Authority* then in the Kingdom, the *Privy Council* and Great *Lords*, with the City of *London*. All the *Judges* but one Subcrib'd to her *Title*, with the Lord *Archbiſhop* (*Cranmer*) the Lord *Chancellor*, and 33 of the *Privy Council*. And *Ridley* Biſhop of *London* Preached it up at St. *Paul*'s

Croſs. See Dr. *Burnet's Reformation.* Part. 2. p. 223. and p. 238.

On the other hand, the Lady *Mary* made then but a very Slender Figure, Skulking as it were from Place to Place, even to the Sea ſhore, not knowing where ſhe was Safe. She was within half a Days Journey of *London* when her Brother *Edward* VI. Died but was Advis'd by her Friends to Retire, as ſhe did, and left the *Poſſeſſion* to *Jane* her Rival.

To ſay ſhe did not keep *Poſſeſſion* long, is nothing to the Purpoſe, for one Day is as good as ſeven years to Determine *Right.* Or elſe, Mr. *Higden*, you muſt tell us, how long *Poſſeſſion* muſt continue to make it *Poſſeſſion.*

Blood's Poſſeſſion was a little with the ſhorteſt, for he cou'd not Carry off his Prey. But if he cou'd have kept it, he wou'd have had a *Right* to the *Crown* he *Stole*, by your Doctrin, as Good and Lawful as any Hereditary *King* ever was in *England* !

10. But, Sir, by *Poſſeſſion* the *Law* means only a *Juſt* and *Lawful Poſſeſſion.* And ſuppoſes a *de Jure Poſſeſſion*, even where an *Uſurper* has the *Poſſeſſion de Facto.* As you may ſee in the *Statute* 1 *Mar.* Seſſ. 2. c. iv. where Queen *Mary* her *Moſt Lawful Poſſeſſion* is ſaid to have been *for a time Diſturbed and Diſquieted, by the Traytorous Rebellion and Uſurpation of the Lady Jane*, &c. Now this was before Queen *Mory* had any Poſſeſſion *de Facto*, for the Lady *Jane* never Diſturb'd her afterwards. But this is Explain'd in the ſaid *Statute*, where it is ſaid, *That Immedietly after the Deceaſe of Edward* VI. *the Imperial Crown of this Realm, with all the Dignities* &c. *thereunto*

unto belonging, did not only Descend, Remain, and Come unto our most dread Soveraign Lady the Queens Majesty, but also the same was then Immediately and Lafully Invested, Deem'd and Adjudged in her Highness most Royal Person, by the due Course of Inheritance, and by the Laws and Statutes of this Realm.

And that *Statute* was made to *Confirm* such Proceedings during the Short *Reign* or *Usurpation* of the Lady *Jane* as Concern'd the Benefit of the *Subject*, and that they shou'd be as Valid, as if done by Queen *Mary* her self, and in her Name. This I think sufficiently Evinces that Lady *Jane* was in *Possession*, and a *Queen de Facto*. Else why shou'd any of her Acts as *Queen* be *Annulled* (as several were, all particularly after such a Day, the vi of *July* last past) and others *Comfirmed?*

And such a *de Jure Possession* in the *Deeming* of the *Law*, the *Parliament* did own to have been in King *Char.* II. during the 12 Years of his *Banishment*, while the *de Facto Possession* was in the *Usurpers*. But all the *Right* was still in the *King*, tho' he had never been *de Facto* in *Possession*.

11. You begin your Book with Casting a Stumbling-Block in the way, and say, p. 1. That ther were *Thirteen* Kings from the *Conquest* to *Henry* the VII. who came to the Crown without *Hereditary* Titles.

This is to give Countenance to *Usurpation*, and make it *Popular*. But the Repeating of *Wickedness* makes it not less but much the more *Wicked*. And your *Principles* Condemn *Usur-*

pation. Therefore this makes nothing for you. It was only to Caſt a *Miſt* before the Eyes of the Readers.

But then you ſhou'd have told them, That tho' ſeveral did *Uſurp* the *Crown*, yet that they cou'd not be *Settl'd* nor Enjoy it *Peaceably*, till the *Death*, *Reſignation*, or *Compromiſe* of thoſe who had the *Hereditary* Right.

William the *Conqueror* left *England* by his *Will* to *William* II. his Second Son, but left his Eldeſt Son *Robert* to Inherit *Normandy*, which he had by *Hereditary* Right. I ſuppoſe he thought that he might Diſpoſe of *England* as he pleas'd, being his own Acquiſition by *Conqueſt*. Sir *John Davis* ſays he was more a *Conqueror* of *England* than *Hen.* II. was of *Ireland*, which as a *Conqueſt* he gave to *John* his Youngeſt Son. Who if he had not come to the Crown of *England*, he and his Poſterity had Enjoy'd *Ireland*, Independent of *England*, which Devolv'd to his Elder Brother by *Hereditary* Right.

But *Robert* the Eldeſt Son of the *Conqueror* Contended with his Brother *William* II. for *England*, and at laſt came to a *Compromiſe* with him, to have it after his Death, and a Certain *Sum* to be yearly pay'd him in the mean time.

He made the like *Compro iſe* with his other Brother *Hen.* I. who Marry'd the *Heireſs* of the *Saxon* Line, *Edgar Atheling* having before Submitted.

And *Stephen* the *Uſurper* made the like *Compromiſe* with *Maud* the Empreſs *Heireſs* of *Hen.* I. and with her Son *Hen.* II. who accordingly

did

did Succeed him. *And received an Hereditary Kingdom without Diminution.* And therefore Recalled the *Crown Lands* which were Granted away by K. *Stephen*, for that *the Charts of an Invader ought not to Prejudice a Lawful Prince.* Brady's *Hist. England.* p. 298.

Arthur Duke of *Britany* did *Homage* to his *Uncle* King *John.* ibid. p. 465, And soon after *Died*, some say was Murder'd by K. *John.*

Edw. III. when Young was Carry'd about by the *Queen* his *Mother* and other *Rebels*, to give Countenance to their *Conspiracy* against his *Father* K. *Edw.* II. And when they would have made him King, *Juravit quod invito Patre Nunquam Susciperet Coronam Regni.* He *Swore* he wou'd never take the *Crown* against his *Father's* Will. whereupon they brought him a *Resignation* (they forced his *Father* to give) wherein he Declar'd that he *Willingly* and *Freely* did *Resign* to his *Son.* Whereupon, and his *Mother's* persuasions, he was set upon the Throne, being then but *Fourteen* Years of Age. About half a Year after his *Father* was Murdered by the *Rebels*, and he Reign'd afterwards by *Hereditary* Right. And did Justice on the *Murderers*, Confin'd the *Queen* his *Mother* during her Life, and Hang'd the Great *Mortimor* her *Accomplice*, at *Tyburn.*

Hen. IV. Claimed the *Crown* by *Proximity* of *Blood*, as next *Heir.* And the *Heirs* of *York* Submitted to him.

Hen. V. and VI. the same.

And *Rich.* III. Pleaded the *Illegitimacy* of the *Children* of his Brother *Edw.* IV. And so to be Next *Heir.*

These are all upon whom any *Usurpation* can be Charged from *Will.* the *Conqueror* to *Hen.* VII. For *Hen.* II. *Rich.* I. *Hen.* III. *Edw.* I. II. and III. and *Rich.* II. all Reign'd by *Hereditary* Right. And all the others make but *Eight*. Out of which if we Except *Will.* II. to whom the *Conqueror* left the *Crown*. *Edw.* III. for the Reasons above. And the three *Henrys* who Claim'd as Next *Heirs*, and were Submitted to by the other *Heirs*, this will leave but *Four* of the *Thirteen* Mr. *Higden* Reckons. And *Rich.* III. Claiming as next *Heir*, own'd the *Right* to be in the Next *Heir*. So that this will leave but *Three*, that is, *Hen.* I. K. *Stephen* and K. *John*, upon whom it can be Alledg'd that they came to the *Crown*, without Pretence of *Hereditary* Right. And none of these *Three* cou'd be Establish'd but by *Compromise* with those who had the *Hereditary* Right. Was the *Thirteen* then that Mr. *Higden* speaks of a Mistake of the *Printer* for *Three* that it shou'd have been? And I will take even these *Three* from him in the next *Page*, and leave his *Sum Total* a *Nought*.

But, Mr. *Higden*, you are so Fond of Multiplying *Usurpers* upon Us, that you Repeat this again in another Form, p. 62. and of *Eleven Kings* from the *Conquest* to *Edw.* III. you make no less than *Eight* to have been *de Facto* or *Usurpers*. And *some of them* (you say) *through their whole Reigns*, by which you must mean those who never Obtain'd any *Right* by the *Death* or *Cession* of those who had the *Right*. And of this Sort you cannot Name *One*. *William* I. Conquer'd *Harold* an *Usurper*. And *Edgar Atheling* the true *Heir* Submitted

and

and *Swore* Fidelity to him. And the other *Usurpers* made *Compromises* with the Right *Heirs*, or *Survived* them, as I have shewed. And these were but *Four* at most. But you make *Edw.* III. an *Usurper*, when he was a *Child*, and Impos'd upon by his *Mother*. What shall I call this *Straining* in favour of *Usurpation!*

But, Mr. *Higden*, this whole matter is Forreign to your Purpose. For it signifies nothing what Encroachments were made upon the *Hereditary* Right, or what False *Titles* were set up, I say this is nothing to your Point, if None set up the *Title* of bare *Possession*; Which was only Impossible, because none could make that a *Plea* till he was in *Possession*. And therefore they must make use of other *Pretences* to Gain the *Possession*. And they wou'd not Renounce these afterwards, for *Popularity*, and because none will call Himself a *Knave*, and say he set up Sham *Pretences*. So that you cannot give one *Instance* of any who Claimed by mere *Possession*. That never was set up, and ever was Exploded by all Sorts. Even *William* the *Conqueror* Claimed by the Will of *Edw.* the *Confessor*. *William* II. by his Will. *Hen.* I. by Proximity of *Blood* (as he pretended) besides the Election of the *Barons*, who Voted his Brother *Robert* to be *Illegitimate*. *Brady*'s *Introduction*, p. 370. K. *Stephen* pretended that *Hen.* I. upon his Death-Bed had Disinherited his Daughter *Maud* the Empress, and left the Crown to him. Which was Sworn by the Steward of *Hen.* I. his Houshold before the Arch-Bishop wou'd Crown *Stephen*. *ibid.* p. 371. And K. *John* in his *Charter* says he

came to the Crown *Jure Hæreditario*, *ibid.* p. 377. He was then in *Poſſeſſion*, it was in the firſt Year of his Reign, yet he wou'd not Plead that *Poſſeſſion* as a *Title*. He had alſo the Donation of his Brother *Rich.* I. who upon his Death-Bed left the Crown to him, and made all preſent Swear Fealty to him. *ibid.* p. 374. And when all other Pretences fail'd they Pleaded the Choice of the *People*, that is, of their own *Party*, for none of them ever yet meant any thing elſe by the *People*. But none were ſo wanting to Themſelves as to think *Poſſeſſion* alone a Sufficient *Title*.

12. And you further ſay, p. 2. *I don't know there were any NON-JURORS to be found in all thoſe Reigns.*

This was a kind *Memorandum* for your *Quondam* Friends!

But you let all thoſe Eſcape here who ſtand out upon the *Abjuration*. Unleſs you can ſhew that ſuch *Oaths* were in faſhion in thoſe Days. I fancy you will hardly find any before the Year 1659. when *Monk* ſaid it was Swearing againſt *Providence*. But he ſtarted at a New thing, before it was Rightly *Explain'd*. The Kings then Contented themſelves with *Swearing* Men to be Faithful to them, without *Abjuring* after *Turns*, which it was in no *Human* Power to Prevent.

But, Mr. *Higden*, in all theſe *Turns* ther were many *Oppoſers*, who loſt their *Lives* and *Eſtates* for it. And if you will Suppoſe that all theſe *Swore* contrary to what they *Acted*, you will paſs a very hard Cenſure upon our *Anceſtors*,

Anceſtors, for whoſe Reputation you ſeem ſo Tender. Otherwiſe you muſt ſuppoſe that theſe *Non-Compliers* were likewiſe *Non-Jurors*, at leaſt ſome of them.

And all the Advantage you can make of it, is, to ſhew Us, That ther have been thoſe in Other Ages as well as This, who cou'd Diſpenſe with their *Oaths* to ſerve their *Intereſt*,

You ſay p. 5. " When we hear of a " Numerous Party that Eſpouſed the Cauſe " of the Houſe of *York*, we are apt to look " upon them to have been ſo many *Non-Ju-* " *rors* to the Kings of the Houſe of *Lancaſter*. " But this is a great Miſtake, for all the Par- " tizans of that Houſe lived in Submiſſion, " and took *Oaths* of *Allegiance* to the Three " *Henries*.

Are you ſure they *All* did it? We know *Some* did. But how *Truely* did they do it? To take *Oaths* to the Houſe of *Lancaſter*, and at the ſame time to *Eſpouſe* the *Cauſe* of the Houſe of *York!* Do you Juſtify this *Practice?* Elſe to what Purpoſe do you bring this *Precedent?* You had as good have let them been Simple *Non-Jurors*, as ſuch ſort of *Jurors* as theſe, who *Swore* to *Lancaſter*, but *Wrought* for *York*, and *Fought* for it too when ther was Occaſion.

You tell us in the ſame *Page*, " That the " *Conditions* upon which *Robert* Earl of *Glou-* " *ceſter* Swore to K. *Stephen*, had no Manner " of regard to the Titles, either of *Maud* or " *Stephen*, as may be ſeen in *William* of " *Malmsbury*

"*Malmsbury* who liv'd at that time, and De-
"dicated his Hiſtory to that Great Earl.

It is not likely he wou'd be very Severe to the *Earl* in a Hiſtory he Dedicated to him, and of Tranſactions wherein the *Earl* had ſo Great a Share.

I have not that *Hiſtory*, nor can come at it where I am. But Dr. *Brady* in the Reign of K. *Stephen* Quotes *Malmsbury*, and the ſame *Page* you Quote, p. 101. (among others) to ſhew that the *Earl* did this to *Diſſemble* his Deſign, which was to Promote the Intereſt of his Siſter *Maud* and her Children. It was like the Part which *Huſhai* the Friend of *David* Acted with *Abſalom*. And the *Condition* he put to his *Oath* was, *That ſo long as he* (Stephen) *freely permitted him to enjoy his Dignity and Eſtate, he ſhould be true to him.* Brady, p. 273. Which had a double Meaning, for he knew that when he Appear'd for the Right of *Maud*, K. *Stephen* wou'd ſeize his *Honours* and *Eſtates*, as he did. p. 275.

Now, Sir, You ſhou'd have told this too, and not by ſaying that the Condition of the *Oath* the *Earl* took had no Reſpect to the Titles of *Maud* or *Stephen*, lead your Reader to think that the *Earl* had no Reſpect to theſe *Titles*, but look'd only to the *King* in *Poſſeſſion*; the Contrary of which is moſt Evident, for he Fought for *Maud*, and took K. *Stephen* Priſoner in the Field, and Adhered to her Cauſe moſt Firmly. p. 287.

Sir, Not telling the *whole Truth* is *falſe Evidence*. You ſhould have told likewiſe, That the Pinch of the Queſtion lay here, the *Earl* (as

(as all the other Great Men) had ſworn to *Maud*, in the Preſence of her *Father* King *Henry* I. as the true *Inheretrix* of the *Crown*. And after *Swore* to K. *Stephen*, when he had got into *Poſſeſſion*, and *Maud* had never been in *Poſſeſſion*, ſhe being then beyond Seas, and the Queſtion was, which of theſe *Oaths* ſhou'd take Place? And it was Determin'd by the *Pope* and the *Religious* Men of thoſe Days for the *firſt Oath* made to *Maud*, tho' but then in *Reverſion*, againſt the *Oath* to the *King* in *Poſſeſſion*. p. 275. But, Sir, this Matter of *Fact* wou'd not have ſerv'd your *Hypotheſis*.

(III.) I come next to your *Precedents*. And the firſt thing I ſhall obſerve is, That they are all brought out of thoſe Times of *Confuſion*, in the Diſpute betwixt *York* and *Lancaſter*, when ther was nothing but *Rebellion* and *Uſurpation* making the *Laws* ſpeak what they thought fit. And this was far from being an Age of *Precedents*.

The Reigns of *Hen.* IV. V. and VI. laſted about 60 Years, ſo that ther was even a Neceſſity not to Vacate the *Judicial* Proceedings and Suits at *Law* betwixt Party and Party. This Anſwers the *Quotations* you bring upon that Head

And this cou'd not be done, without allowing the *Acts of Parliament* in thoſe Times, upon which the *Judicial* Proceedings did Depend.

And thoſe *Acts* being Good in themſelves, ſo far as related to the *Subject*, the *Lawful Kings* when they came in were willing they ſhou'd be continu'd.

Yet

Yet ſo, as that a ſufficient *Mark* ſhou'd be put upon the *Uſurped* Authority by which they were *Enacted*. Which I will ſhew you in the next *Section*.

As a Preparative to which, it may be conſider'd, That things may obtain the Force of *Acts of Parliament*, and be reckon'd as ſuch, which were not ſo in their firſt *Formation*.

Thus *Magna Charta* is plac'd the firſt in our *Statute-Book*. And yet it is nothing in it ſelf but a bare *Charter* from the *King*. But after *Acts of Parliament* being built upon it, and confirming it, it now obtains the Force and Name of an *Act of Parliament*. And beyond any others, inſomuch that it has been thought *Un-Repealable*, as being the Foundation of all our *Laws*.

Again, I have ſhewed you ſeveral *Acts of Parliament* ſo made as would not be Allowed now. Yet they paſs for good *Acts of Parliament* ſtill, and are ſo *Pleaded* in our *Courts*.

Nay, *Parliaments* ſo Call'd and ſo Conſtituted as I have ſhewn, would not be Allowed for *Parliaments* at all now. Yet by Cuſtom this alſo has Obtained.

You tell p. 9. how before the 1 *Edw.* VI. All *Actions*, *Suits*, &c. were *Diſcontinued*, upon the *Demiſe* of the *King*, in whoſe *Name* and by whoſe *Authority* the *Laws* were Adminiſtred. Then p. 9. 10, 11, 12. You Quote many Caſes out of the *Year Books* where ſuch *Actions* and *Suits* were *Diſcontinued* upon the *Demiſe* of an *Uſurper* as well as of a *Lawful King*. Thence you Infer that the *Law* takes

Uſurpers,

Usurpers, when in *Possession*, to be as Good as *Lawful Kings*.

But, Sir, the *Laws* were Administred in the *Names* of *Usurpers* while they kept in *Possession*. And it was Impossible to be otherwise. And the *Judicial* Proceedings of those Times must have been Allowed by *Rightful Kings* when they came in, without an Utter Ruin to the *Subjects*. Ther was an Act 1 *Mar.* Sess. 2. c. iv. to Confirm what of this sort had pass'd in the Name of Queen *Jane* during her *Ten Days* Reign. How much more during the *Sixty Years* Reigns of the Three *Henries*? So that this is no Proof at all of the *Legality* of these *Kings* or *Queens de Facto*, more than the *Histories* which tell Us ther were Such.

You your self shew this, p. 15. where you give a long Quotation out of the *Year Books* of *Bagot*'s Case, who was *Naturaliz'd* by *Hen.* VI. And this was Allowed to be Good in the Reign of *Edw.* IV. by the same *Judges* (likely) who had been under *Hen.* VI. But the Reason given in the *Year Book* is, *Because it was Necessary that the Realm should have a King under whom the Laws should be kept and Maintain'd.* But that this might not be Interpreted to Imply the *Legality* of that King *de Facto*, it is Ordered in the same *Case*, as Quoted by you, " That for a *Trespass* committed in " *Hen.* VI's time, the *Writ* shall run *Contra* " *Pacem* Henrici *VI. Nuper de Facto et non de* " *Jure.*

Then the Case is put of Compassing the *Death* of *Hen.* VI. And it is called *Treason*, *because*

because the said King was not Meerly a Usurper, for the Crown was Entailed upon him by Parliament. Otherwise it seems by this Resolution of the *Judges* (wherein their own Case might be concerned) it had been no *Treason* to have Compass'd his *Death*, if he had been *Meerly* an *Usurper*.

But is not *Shooting* at the *King* a Compassing his *Death?* And was any thought Guilty of *Treason* or *Murder* for *Killing* King *Rich.* III. in *Bosworth-field?* And he had a *Parliament* to Entail the *Crown* upon him too. Which his *Judges* might likewise have Pleaded in the Reign of *Hen.* VII. But this was no Part of their Plea, they only Insisted upon his being King *de Facto*, as we shall see presently.

But, Mr. *Higden*, how could these *Kings* be Called *Usurpers*, and *de Facto* and not *de Jure*, if *de Facto* is always *de Jure?* And how can he be an *Usurper* who has the Full and the Legal *Right?*

You brought these *Cases* to shew, That by the *Judicial* Proceedings in the Time of *Usurpers* being Allow'd, it would follow that they were *Lawful Kings.* But as the *Consequence* will not follow, so these *Cases* you bring have Turn'd upon you, and have expresly Guarded that *Point* against you, and left you to Answer these same *Authorities* you have Produc'd to Maintain your Cause.

I know nothing you can Alledge against this, but to Blame the Conduct of our later *Kings* and *Parliaments*, to Suffer such *Parliaments* as I have Named to pass as such, and their

their *Acts* to be Allow'd as *Acts of Parliament*. And likewiſe that the *Judicial* proceedings in ſuch Times, and all Times of *Uſurpation*, and in the *Name* of the *Uſurpers*, ſhould ſtill be *Pleaded* in our *Courts*. If you think this *Impolitick*, for that it may give Occaſion to Others, as it has to you, to Miſtake *Uſurpers* for *Lawful Kings*, it may be Anſwer'd in their Defence, That this happens ſo ſeldom, and when it do's, is ſo Eaſily ſet Right, that the Danger is not Great, nor would Countervail the Inconveniences on the other Side. For how can we miſtake thoſe for *Lawful Kings* whom our *Laws* Attaint as *Uſurpers*, however it Allows the *Laws* made in their times?

But ſuppoſe this to be a *Neglect* or *Overſight*, it can Amount to no more than a *Negative* or *Preſumptive* Argument. And that is too Weak a *Foundation* to Build any *Principle* upon, eſpecially ſuch as overturns the *Right* of *Crowns*, and the *Peace* of *Kingdoms*.

(24) But that which wou'd be *Deciſive* in this Caſe is, if we cou'd find any *One* Inſtance of any *Law* made by an *Uſurper* which was *Confirm'd* by the *King de Jure*, or Declar'd *Null* from the Beginning for want of Sufficient *Authority*. This wou'd be an *Affirmative*, and worth a hundred *Negatives* or *Neglects*.

And of this we have a very flagrant Inſtance in the firſt *Statute* of *Edw.* IV. who was the firſt of the Houſe of *York* recover'd the *Crown* after the Three *Henries*. And now being about to ſettle the *Government* in the

Right

Right Line, the firſt thing done was, for the Quiet and Eaſe of the *Subject*, to Declare, *Which Acts done by the Three* Henries *ſhou'd Continue good, and which not.* And accordingly *Confirms* the *Judicial* Proceedings, the *Creation* of *Noblemen*, and ſeveral other things, *Excepting* ſuch as the *King* thought fit. And the Reaſon for ſuch *Confirmation* is given, becauſe theſe *Acts* were done by *Uſurpers*, who were Kings *de Facto*, but not *de Jure*. And the Manner of *Confirming* was, That they ſhou'd be of *like force and Effect as if made by any King Lawfully Reigning, and obtaining the Crown by juſt Title*, as it is worded in the *Statute*. 1 *Edw.* IV.

You come to Anſwer this *Chap.* III. p. 49. That ther was no Need of any of theſe *Confirmations*. This, Sir, is making very Free with that *Parliament*, as if they had been *Triffling* all this while. But you ſay that this was done, *thro' the Caution probably, and at the Deſire of thoſe that were Concern'd in them* (thoſe *Acts of Parliament* then *Confirm'd*) *which did not however ſtand in Need of that Confirmation.* This puts the *Fool* upon thoſe *Concern'd*, but takes it not from the *Parliament*, which ſhou'd Gratify them in what was perfectly *Needleſs*. But your Argument is, That other *Acts* which were not *Confirm'd* ſtand ſtill Good. That may be, for the Reaſon aforeſaid. But they were ſtill Liable to be Queſtion'd, for want of Sufficient *Authority*. And therefore thoſe *Concern'd* in thoſe *Acts* made for the Benefit of the Town of *Shrewsbury*, and of ſome *Religious Houſes*, were not ſo Quite out of Purpoſe as you Imagin, to Deſire thoſe *Acts* to

be

be *Confirm'd*. If they did Desire it, which Appears not. But that it was an Instance of the *Legislative* Authority being only in *Lawful* Kings.

But why were any of these Acts *Confirm'd?* It shews ther was some Defect in the *Authority* that made them. Can you give one single Instance out of all our *Records* of any *Act of Parliament* made by a *Rightful King* that ever was *Confirm'd*, for want of Sufficient *Authority?* This shews you the *Difference*. And the whole Dispute shews ther was a *Difference* made betwixt *de Jure* and *de Facto*.

Were any *Judicial* Proceedings in the Reigns of Kings *de Jure* ever *Confirm'd*; or Titles of *Honour* granted by them, or any other *Regal* Act? Here the Cause Pinches. And till you can shew this, you cannot say as you do, p. 8. and p. 23. That Kings *de Jure* own the *Authority* of Kings *de Facto* in *as Ample a Manner* as of Kings *de Jure*, and *of Equal Authority with Themselves, or any of their Progenitors of Undoubted Right*. How can this be said? When we see that Kings *de Jure* have *Annull'd* some, and *Confirm'd* other *Acts* of Kings *de Facto*, but never eithеir of these was done to any *Act* of a King *de Jure*.

To have *Annull'd* all the *Judicial* Proceedings, and all the *Acts of Parliament* during the 60 Years of *Usurpation*, wou'd have put the Nation into the Utmost Confusion.

And to have *Confirm'd* them all without Discrimination might have been too much.

Therefore the *Statute* 1 *Edw.* IV. *Confirm'd* ſuch as was thought fitting. And left the Reſt, without being either *Annull'd* or *Confirm'd*, to be Commonly Pleaded. It being ſtill in the Power of the *Government* to Declare them *Null* and *Void*, whenever they ſaw any Inconvenience by them.

And as no King *de Jure*, ſo None *de Facto* ever did either *Annul* or *Confirm* any *Act* of a King *de Jure*, as ſuppoſing it to Want Sufficient *Authority*. So that the *Difference* appears Plain, even by the Confeſſion of Kings *de Facto*.

(3.) But, Sir, I think you Expect too much, when ſpeaking of the *Laws* made in time of *Uſurpers*, you ſay, p. 19.

" They who would ſet aſide any of their " Grants, or Oppoſe ſome Right that was " claim'd by Vertue of them, as of *Richard* " the Third's for example, did not pretend, " no not in *Henry* the Seventh's Courts, where " they might ſafely have done it, if it had " been Law, they did not pretend, I ſay, " that *Richard* had not the Regal Authority, " and Conſequently his Grants were Void.

Sir, wou'd you have had *Hen.* VII. who was an *Uſurper* upon the Line of *York*, have Declar'd the Acts of *Richard* III. to have been Void, becauſe he had *Uſurp'd* upon thoſe in the Line of *York* who were Nearer than himſelf? This I call Expecting too much from an *Uſurper*, to Declare all Acts made by an *Uſurper* to be Void.

And

And for the *Judges*, was it not very Natural for them who had been *Judges* under *Richard* III. to make the Beſt of what they had done? Nor wou'd it have been over ſafe for them in the time of *Hen.* VII. to have voided *Laws* on Account of *Uſurpation*. They might have *Hang'd* themſelves by the ſame *Law*. The *Vicar* of *Bray* who Complies with *All*, muſt find Fault with *None*.

You bring a Caſe p. 38. where the *Judges*, the firſt Year of *Hen.* VII. were Commanded by him to Conſult about the Reverſal of the *Act* made in the Reign of *Rich.* III. which *Baſtardized* the *Children* of King *Edw.* IV. and *Elizabeth* his Wife.

This, Sir, I think makes againſt you. For who ever Diſputed the *Validity* of an *Act of Parliament* made in the Reign of a *Lawful King*? But then the Difficulty lay upon *Hen.* VII. who was an *Uſurper*, to Declare the *Acts* of another *Null* for being an *Uſurper*. And ſuch he muſt call *Rich.* III. Elſe why did he Fight againſt him? And ſuch he does call him in this ſame *Year Book* which you Quote, p. 39. giving him only the Style of *Richard* late Duke of *Glouceſter*, and afterwards *in Fact*, and not *of Right*, *King* of *England*. And it was better for *Hen.* VII. That the *Acts* of *Uſurpers* ſhould be taken for Good, and ſo *Repeal'd*, rather than to be Declar'd *Null* from the Beginning. Here was the Caſe wherein he Conſulted the *Judges*. And theſe muſt be ſuppos'd very Plyable, not only as put in by him, but as having been in Place, moſt probably *Judges*, the Year before under *Rich.* III. For

we Read not that *Hen.* VII. did Change all the *Judges*. And in moſt *Revolutions* ther is no Occaſion.

You put another Caſe, p. 40. in the ſame *firſt* Year of *Hen.* VII. Concerning thoſe who were *Attainted* in the former Reign of *Rich.* III. and were Return'd *Members* of *Parliament* the firſt *Parliament* of *Hen.* VII. Whether they ſhould ſit in *Parliament* before their *Attainders* were Reverſed? And the *Judges* gave their Opinion that the *Attainders* ſhould be firſt *Reverſed*, and the *Attainted Perſons* themſelves ſhould not be in *Parliament* at the *Reverſal* of the *Act*, for as you tranſlate the *Year Book*, p. 41. *Thoſe that are Attainted, cannot be Legal Judges.* Tho' the Words are only, *il neſt Convenient*— It was not *Convenient*, that thoſe who were *Attainted* ſhould be taken for *Legal Judges.*

But tho' it was not *Convenient* then, it might be another Time. I dare ſay if you wou'd ſet about it, you cou'd find an *Inſtance.* And will you ſtand to it, That Men *Attainted* or *Uncapable* by *Law* to ſit in *Parliament*, cannot be *Legal Judges?* And will you make that ſuch an Error in the firſt *Concoction* as to *Void* all their Laws, and all the *Conſequences* of them for this? will a *de Facto CONSTITUTION* Solve all this too? If ſo, why do you perplex Us with *Year Books* and *Caſes?* Let Us take whatever is *Uppermoſt*, be it *Right* or *Wrong!* If this is not your Meaning, I do not Underſtand your Book. And if thoſe *Attainted* Perſons, had ſat in the *Parliament* of *Hen.* VII. before their *Attainders* had been *Reverſed*, and that *Parliament* had been never the

the Worſe *Parliament* for all that, then to what Purpoſe was this *Caſe* brought?

Quod fieri non debet Factum Valet, will not hold in all Caſes. But if it does in *This*, it will alſo in *That* of the *Acts* of *Uſurpers* being Suffer'd to be Pleaded in the Reigns of *Lawful Kings*. And will be a ſhort Anſwer to the *Main* if not the only *Argument* in your Book, which is all taken from ſuch *Precedents* as theſe. And that of *Oliver* and the *Commonwealth* of *England* as Good as any of them.

But *Rich.* III. is here call'd King *in Fact* and not of *Right* in this Quotation you have brought, in the firſt Year of the Reign of *Hen.* VII. This is the *King* from whom you bring your beſt *Precedents* and from the *Acts of Parliament* in his Reign. Now let him be Judge; Did he think that Allowing the *Acts of Parliaments* in the Reign of *Rich.* III. made for the Benefit of the *Subject*, did Imply *Richard* to be a *King* of *Right*, when here he expreſly Denies him to be a *King* of *Right*? Yet he Grants him to have been a *King* in *Fact*. Then he did not think that a *King* in *Fact* was alwas a *King* of *Right*. Nor that the *Statute* made in the *Eleventh* of his *Reign*, to Indemnify thoſe who had fought for a *King* in *Fact* (Suppoſe that to be the Meaning) did Infer that ſuch a *King* was of *Right*, but rather the Contrary, elſe ther had been no need of an *Act* to *Indemnify* them. But if a *King* in *Fact* be not Always a *King* of *Right* alſo, your whole *Book* falls to the Ground. And this *Hen.* VII. has given againſt you in

Expreſs words. As alſo thoſe *Acts of Parliament* which have Attainted *Kings* in *Fact* for not being likewiſe of *Right*. Is it not Plain then they made a Difference?

(4.) Sir, I think you lay too much Streſs upon the Opinions of *Judges*. And but of ſome of them too, as in moſt of the *Year Book Caſes*, and as at this day, where often ſome of the *Judges* Differ from the others. And theſe *Caſes* are not Certain *Rules*. We find not their Authority Undiſputed in our *Courts*. But I have given you a better *Authority*, that is, the *Records* and *Acts of Parliament*.

You ſay, p. 20. That the *Unanimous Opinion* of the *Judges* is *part of the Common Law of the Realm*. It may be ſo, in particular Caſes of *Meum & Tuum* betwixt *Party* and *Party*. And yet not Always ſo, for we have found their *Judgements* Revers'd. As in the Caſe of *Ship-Money*, which all the *Judges* at firſt gave Under their Hands was *Legal*. And but *Two* cou'd be brought afterwards to Retract. Ther is Difference betwixt *Common Law* and *Cuſtom* firſt *Inſtit*. Every *Cuſtom* is not *Common Law*.

But will you take the Opinion of all the *Judges*, and in *Parliament* too? Which you Quote, p. 53. When being Conſulted about the Right of *Richard* Duke of *York* to the *Crown*, in Oppoſition to *Hen.* VI. then King *de Facto*, they Anſwer'd, *That the Matter was too High, and touch'd the King's high Eſtate and Regaly, which is above the Law, and paſſed their Learning*. Unleſs you ſay, they *Complemented* Now.

Now. But when they ſpeak on your Side, they are in *Earneſt!* But the Reaſon they give is ſtrong, That the *King* is Above the *Law*. For what makes the *Law* muſt needs be Above it. And that the Right of the *Crown* did *Surpaſs their Learning*. Their *Commiſſion* is only to Diſpence the *Law* in private Caſes betwixt *Subject* and *Subject*. But as to the Right of the *Crown*, they have no more Power to *Judge* of it than You or I.

(5.) Therefore I can by no Means be of the Opinion you ſet down, p. 88. *That the Interpretation of the Obligation of the Oaths, taken to the Civil Magiſtrate, is the Province of States-Men and Lawyers, not of Divines.* This may be the way to have your *Conſcience* Solv'd more Eaſily! For theſe *Caſuiſts* you have Choſen, were never thought to be very *Strait-Lac'd*. A *States-Man's Conſcience* is a *Proverb*. I obſerve our *Homiles* and Biſhop *Overal's Convocation Book* took another Method, and inſtead of Quoting *Magna Charta* and the *Year Books*, they endeavour to ſettle *Conſcience*, as to *Government*, upon the Foundation of the Holy *Scriptures*. Whence they ſhew the *Original* of *Government*, and how *Inſtituted* of *God* from *Adam*. They begin with *Lucifer* the firſt *Rebel*, and thence Deduce *Rebellion* among *Men*. They Exemplify the Duty of *Subjects* in the Behavionr of *David* towards *Saul*, and other *Scripture* Examples. But *States-Men* will tell you, that all this is Nothing to Us, and bid you look to the *Conſtitution* for the *Meaſure* of your *Obedience*; and Deduce that from the

Power of the *People*, which they tell you is the *Voice of God*; and that every thing is *Right* which the *People* does! But the *Scripture* bids you not follow a *Multitude* to do *Evil*. And tells you of *Iniquity* Eſtabliſh'd by *Law*. If it had been ſaid, he who Reſiſts ſhall be *Hang'd*, I wou'd Adviſe with a *Lawyer*: But when it is ſaid, ſhall Receive to himſelf *Damnation*, I think a *Divine* ought to underſtand it.

It is ſaid 16 *Rich.* II. c. v. That the *Crown of England is in no Earthly Subjection, but Immediately Subject to God, and to none Other.* Now whether is this *Tenure* from *God* the buſineſs of *Lawyers* or *Divines?* It is ſaid likewiſe, That *any Act of Parliament againſt the Law of God is Void.* I hope *Divines* have ſomething to do here. If not to Alter *Laws*, yet to ſettle *Conſcience.* And this High *Prerogative* of *Kings*, which was once above the *Law*, and Unalterable by the *Law*, can be Learn'd only from the *Law* of *God*, from which only they hold the *Crown.* But they who wou'd Exclude *God* out of the *Government*, begin with turning *Divines* out of the Cauſe. They might be too *Strict* in the Matter of *Oaths.* It is a *Law Oath*, ſay you, therefore let the *Lawyers* determine it. But, Sir, it is the *Oath* of *God* too, and He will Require it. And where *God* is Concern'd, *Divines*, and not *Lawyers*, have uſually been taken for *Confeſſors.* Nor is the Nature of *Government* to be taken from every *de Facto Conſtitution* that may happen, Right or Wrong; but from the *Original Inſtitution* of it by *God*, and how it was Deliver'd by.

by *Him* to *Men*. For from thence only arises any Obligation of *Conscience* to *Government*. And this is more the Work of *Divines* than of *Lawyers*. And some *States-Men* are not willing to be Confin'd to these *Rules*. They Consider *Fact* more than *Right*, and what is *Convenient* (may be to Themselves) more than what is strictly *Just* and *Conscientious*. They study *Machiavel* more than the *Bible*. And he tells them that a *Politician* must not be over *Religious*. And if we think of *Government* only as a *Politick*, for our own Convenience, *Conscience* will not trouble Us much! This, you know, is the Opinion of our *Commonwealth-Men*, That *Government* was the Invention of *Men*, and therefore Lyable to all the Turns *People* please to Make. And wou'd you seek to Convert these out of the *Year Books*, or tell them of our *Constitution?* Wou'd you not rather Carry them to the *Bible*, and there shew them the true *Original* of *Government*, and the Obligation *God* has laid upon our *Conscience* to submit to it, as to His own *Ordinance?* In short, wou'd you talk to them as a *Divine*, or a *Lawyer*, or a *Politician?* In which of these Capacities, do you think, you cou'd best Inforce the Obligation of their *Oaths* to the *Government?* Whether to keep a *Lawful Oath*, or to Break an *Unlawful* One? And whether this is to be Measur'd by the *Law* of *God*, or by any *Law* the *People* make? And whether a *Lawful Oath* may be Discharg'd, by taking another that is *Contradictory* to it? I shou'd think a *Pious* and *Learned Divine* more Proper to be Advis'd with in such Cases,

Cases, than the Ablest *Lawyer* or *States-Man*. But above all, an *Honest* and *Sincere Heart*, for ther wants not much *Understanding* in these Matters, Unless it be to *Perplex* and *Puzzle* the *Cause*. And he that *Seeks* will *Find*, in a *Bad* Sense, as well as in a *Good*. *Balaam* had a Mind to the *Reward*, but wanted an *Excuse*, and he *Found* it. He was Importunate for *Leave* to go, after *God* had Refus'd him, and *God* yielded to his *Importunity* and gave him *Leave* at last; but this Excus'd him not, and is call'd the *Madness of the Prophet*. The best way in such Cases is this, to Ask ones own *Heart*, Wou'd you take this *Oath*, if you were neither to *Gain* or *Loose* by it? Otherwise you do not take it *Voluntarily* and *Freely*. And all your *Distinctions*, and *High* and *Low Sense*, &c. Where the *Law* allows of no such *Distinction*, shews you take it in a *Sense* contrary to the *Law*, and your own *Conscience* too. For he who Cannot take an *Oath* in the Plain and Common *Meaning* of the *Words*, and according to the *Sense* of the *Legislators*, Declar'd not only in *Words* as *Expres's* as they can Devise, but likewise in all their *Actions* and whole *Government*, I say, he who Cannot take the *Oath* thus, without any *Mental Reservation* or *Equivocation* whatsoever, ought to let it alone. And all his *Reasons* and *Distinctions* and *Salves*, shew only, That he has *Deceiv'd* himself, and wou'd *Deceive* others. Do's he do in this Case as he wou'd be done to? Wou'd he be Content that any *Oath* taken to *Himself* shou'd be thus *Distinguish'd* away? Wou'd he Trust that Man's

Oath

Oath whom he ſaw make *Faces* at it, and had ſtood out many Years againſt it? But a *Politician* cou'd help with ſeveral *Maxims* in this Caſe, as, *Fallere fallentem*, to *do Evil that Good may come*, to *Look one way and Row another*, &c.

Theſe are the Reaſons, Sir, why I except againſt thoſe *Caſuiſts* you Propoſe. And think the Nature of *Government* as from *God*, to be out of the Compaſs of the Study of the *Common Law*, and more the Province of *Divines*, than of *Lawyers* or *States-Men*, eſpecially where ther are *Oaths* in the Caſe.

(6.) And now I return to the buſineſs of *Precedents*. And Confeſs my ſelf not able to Underſtand the laſt *Paragraph* with which you Conclude your *Second Chapter*, p. 48, 49. I will ſet it down that I Miſtake not. It is the *Concluſion* you have made from all the *Precedents* you have brought for ſubmitting to a *King de Facto*, and is in theſe Words,

" But now on the other ſide, did the King " in Poſſeſſion, or his Parliaments, or the " Parties concern'd, ever think an Act of " Parliament was Wanting for thoſe who " Fought for Him, againſt a Perſon out of " Poſſeſſion, whatſoever Title he had, or Pre- " tended to have. Can there be One In- " ſtance given of this, in all our Laws or " Hiſtory?

Sir, I wou'd not put ſuch a Trifling Meaning upon your Words, as to ſay you Intended this only, While the *King* in *Poſſeſſion* remain'd in *Poſſeſſion*. For then, no doubt, he was

was able to *Protect* thoſe who Fought for him. But after he was *Diſpoſſeſs'd*, and his *Rival* upon the *Throne*, was ther then no Need of an *Act of Parliament* to ſecure thoſe who had Fought for him? Unleſs you mean that an *Act of Parliament* made by the *Diſpoſſeſſed King* wou'd have Signify'd *Nothing*. And then that will Turn upon you another way, and ſhew the no *Validity* of an *Act of Parliament* made by *de Facto* againſt *de Jure*. And this Certainly was the Caſe, for in every *Turn* betwixt *York* and *Lancaſter*, the *Victor* always *Attainted* and put to *Death* whom he thought fit of thoſe who had Fought againſt him, for the *King* in *Poſſeſſion*. And this Occaſion'd, as the *Hiſtory* tells Us, the Utter Extirpation of many *Noble Families* in *England*. And thoſe who Fell on either ſide make Equally to my Purpoſe, becauſe both *Rivals* did Pretend to be *de Jure*; and this ſhews the Notion of thoſe Times to be for *de Jure* againſt *de Facto*. Whereas if the Notion of *de Facto* being always *de Jure*, and the *Allegiance* of the *Subject* due only to *de Facto*, and to look no further, if this had been ſo the *Common Uſage* as to make it the *Common Law*, as you ſay it was, and if no *One Inſtance* can be given againſt it *in all our Laws and Hiſtory*, then that long *Civil War* betwixt *York* and *Lancaſter*, which laſted above an *Hundred* Years, muſt all paſs for *Romance!* Otherwiſe to bid me give *One Inſtance* of *Attainders* for Fighting for a *King* in *Poſſeſſion*, is to bid me ſhew you a *Drop* of *Water* in the *Sea!*

I have taken Notice, Sir, before, that you like not theſe *Acts of Attainders*, that you call them *Stretches beyond Law, in the Heat of the Victor's Rage*, &c. But they were *Acts of Parliament* ſtill, make them as much *beyond Law* as you pleaſe! And then you will tell Us, Which *Acts of Parliament* were made out of *Heat*, and are *Law*, and which are *beyond Law*. And then give others Leave to *Except* too, and it will Reduce our *Statute Book* to a more Reaſonable Compaſs!

(7.) You Urge often, That the *Deſcent* of the *Crown* purges all *Attainders*. But whether this is Meant of a *de Facto*, or a *de Jure Deſcent*, is the Queſtion? If you Mean that while *de Facto* is in *Poſſeſſion* (and it is no longer *de Facto*) it is pretty Safe from *Attainders*, you are Safe. But if it *Purg'd* throughly, then cou'd not the *Attainder* be put upon it again, as a *Crime* once Legally *Pardon'd*, is *Purg'd* for Ever. But we find not that the *de Facto Deſcent* of the *Crown* did thus *Purge* Hen. IV. For he was afterwards *Attainted* as an *Uſurper* and a *Traitor*. As likewiſe *Hen.* VI. See *Cotton's Record.* p. 670 671.

(8.) And if all *Acts* of *de Facto* are as *Valid* as of *de Jure*, how came the *Repeal* 1 *Edw.* III. to be Judg'd *Void* in *Parliament*, becauſe made while his Father *Edw.* II. was ſtill Living, tho' *Diſpoſſeſſed*, and then in *Priſon? Cott. Record.* p. 373.

The

The Learned Dr. *Stillingfleet* Quotes this Case in his *Grand Question, concerning the Bishop's Right to Vote in Parliament in Cases Capital.* Printed, 1680. And gives Us the very words of the *Rolls* of *Parliament*, p. 81. *Because* Edw. *II. was Living, and true King, and Imprison'd by his Subjects at the time of that very Parliament of* 1 Edw. *III.* Rot. 64. 21. *Rich.* II. And speaking of the Repeal of 21 *Rich.* II. by 1 *Hen.* IV. he asks this Question p. 83. *Whether a Parliament call'd by a Lawful King, and the Acts of it, ought to be deem'd Legally Repeal'd by a Parliament that was call'd by an Usurper, and held whilst the Lawful King was alive, and detain'd in Prison?* For he had Quoted the *Lawyer*'s Words before, p. 82. Owning that *Rich.* II. *was their Lawful King.* And he says, p. 85. *That the Repeal* 1 Edw. *III. was no Legal Repeal, because* Edw. *II. was alive and Lawful King, (or else* Edw. *III. cou'd never have been so) in the time of that first Parliament of* Edw. *III. and Consequently* Edw. *III. at that time was an Usurper, and the Proceedings of that Parliament Null and Void.*

I have Quoted this Book of Dr. *Stillingfleet*'s, because I cannot doubt but you have Read it, it so nearly Relating to the *Church.* And he shews himself Excellently and Critically Skill'd in our *Laws* and *Constitution*, even beyond most *Lawyers*, and by their own Common Suffrage. And in the Esteem of the House of *Lords*, while he sat there after he was made a *Bishop.*

In answer to this *Precedent* you say, p. 58. That the Act 1 *Edw.* III. *was not declar'd Void,*

21 *of* RICH. *II. but Repeal'd, and therefore valid untill Repeal'd.* To which I will give the Anſwer of Dr. *Stillingfleet*, p. 80. *That the Act* 1 Edw. *III. was not barely Repeal'd, but Declar'd in Parliament to be Unlawful, becauſe* Edw. *II. was Living, and true King*, &c, as before Quoted from the *Rolls* of *Parliament*, which are more *Authentick* than our *Printed Statutes.*

But you ſay, *Secondly*, That the *Repeal* 21 *Rich.* II. was *Repeal'd* 1 *Hen.* IV.

The ſame was Objected by Dr. *Stillingfleet*'s Oppoſer, to which he Anſwers, p. 83. That the *Repeal* of *Hen.* IV. was Void, becauſe it was made while *Rich.* II. was Living, tho' *Depoſed*, and then in *Priſon.* So that the Caſe was juſt the ſame as that of the *Repeal* 1 *Edw.* III. And the *Doctor* inforces this upon the *Lawyer* whom he Anſwers, p. 86. by that *Lawyer*'s owning, That *Rich.* II. was then *Lawful King*, tho' *Diſpoſſeſſed*, and *Hen.* IV. an *Uſurper.*

And becauſe you lay your Streſs upon the Word *Repeal*, I will ſhew you that word may be Us'd without any Intimation of the *Legality* of the Act *Repeal'd.* See 12 *Car.* II. c. 12. §. 6. where the *Attainders* of the *Royaliſts* by the *Uſurpers* are *Repealed* and *Diſcharged.*

And whether the *Authority* of the *Uſurpers* while in *Poſſeſſion* was hereby own'd, you may ſee, §. 12. of the ſame *Statute*, where it is ſaid,

And altho' in this Confirmation of Judicial proceedings, it was Neceſſary to Mention divers pretended Acts and Ordinances, by the Names and Styles which theſe Perſons then Uſurped who made

the

the ſame—— Yet this preſent Parliament doth Declare, and it is further Enacted by Authority of the ſame, That the Names and Styles aforeſaid, and Every of them, are moſt Rebellious, Wicked, Traiterous, and Abominable Uſurpations, deteſted by this preſent Parliament, as Oppoſite to his Sacred Majeſty's moſt Juſt and undoubted Right, &c.

Here this is not only *Declared* but *Enacted*. Yet neither this *Enacting*, nor *Repealing* did Suppoſe the *Validity* of theſe *Acts* before they were *Repealed*, and the Contrary *Enacted*, nor the *Legiſlative Authority* of thoſe who made them, even while they were in *Poſſeſſion*.

But you have a *Third* Anſwer, p. 59. "That all the other Acts of Parliament that "were made in the 1 of *Edw.* III. whilſt "his Father was alive, were ever held for Laws "of the Realm, and one of them cited as "ſuch 16 *Charles* the I. c. 16. about the "Boundaries of Foreſts. *Whereas by Act of* "*Parliament made in the firſt Year of the Reign of* "*King* Edward *the III.* &c.

Ther are two Sets of *Acts* in our *Statute Book* made 1 *Edw.* III. And this about the *Perambulation* of the *Foreſts* is the *Firſt* of the *Second* Claſs. And whether made during the Life of *Edw.* II. I cannot tell. For he was Murder'd about half a Year after his Son *Edw.* III. was upon the *Throne*. But I inſiſt not on this.

Therefore I ſay, This about the *Perambulation* of *Foreſts* being a Common thing, and no ways Concerning the *Right* of *Succeſſion* to the *Crown*, might be Suffer'd to Paſs, as I have before

fore ſhew'd other *Acts* have been, which yet were not Right in their Conſtitution at firſt.

It wou'd be almoſt to make a New *Statute Book*, to Ranſake all the *Laws* about Common things made in times of *Uſurpation* in *England*, and to Determine which ſhou'd ſtand, and which not.

It is Sufficient that ſome of Conſequence have been not barely *Repeal'd*, but Declar'd *Unlawful* for want of Lawful *Authority* in the *Enactors*; and others of ſingular concern *Confirm'd*, for the ſame Reaſon. And one Inſtance (but you have more) on this ſide, is Sufficient, where ther is never a one to be produc'd on the Other ſide; that is, of any *Act* of a *Lawful King* that was either *Repeal'd* or *Confirm'd* for want of Sufficient *Authority* in the *Enacting*.

(9.) But, Sir, you have help'd me to another *Inſtance*, and a Remarkable one, tho' you tell it not out, for it made againſt you. You ſay, p. 57. "This Declaration of the 39 of "*Henry* the VI. as well as the Acts of the 1 "*Edward* the IV. were Repeal'd and An- "null'd by the Act of Parliament, when *Henry* "the VI. Recover'd his Throne.

Now, Sir, where are theſe *Acts* of *Hen.* VI. to be found? Ther are None in our *Statute Book* after his 39th Year. It ſeems then, That after he had Expell'd *Edw.* IV. from the *Throne*, he was look'd upon as a Meer *de Facto King*, and Conſequently all the *Acts of Parliament* made in that time, were thought *Null*

and *Void*, and have no Place in our *Statute Book*.

If you say, Was he not an *Usurper* before? I answer, yes, but it was not so Apparent. For *Richard* Duke of *York*, the Father of *Edw.* IV. had sworn *Allegiance* to *Hen.* VI. and become his *Liege Subject*. And this was Objected to him in *Parliament* when he put in his Claim for the *Crown*. And *Edw.* IV. before he was *King* had Sworn *Allegiance* too. But after that *Hen.* VI. had broken the *Compromise* he made with him, and *Edw.* IV. had gotten the *Crown* which of *Right* belong'd to him, then when *Hen.* VI. put him out again, this was thought meer *Usurpation*, and so none of his *Acts of Parliament* afterwards were put among our *Statutes*.

(10.) Now let me speak a word in *Mitigation* at least of the Behaviour of our *Ancestors*, for whom you shew so great a Concern. For they might think the *Right* of *York* to be Extinguish'd, because the *Heirs* of that *House* had all along under the *Three Henrys*, carry'd themselves as *Subjects*, taken *Commissions* from them, and *Promis'd*, some *Swore Obedience* to them.

And this may be an Answer to the Observation you make, and Repeat it again, p. 51. where you say, " Give me leave to Repeat " an Observation I have made already, that " before this time (that is, of *Edw.* IV.) tho' " others Pretended a better Right to the " Throne, than the Person that Possess'd it,

" it, yet they never assum'd the *Regal Title* " against the *Regnant* King.

But notwithstanding this Remark, *Edw.* III. took the Title of *King* of *France*, and his *Successors* have kept it on to this Day against all the *Regnant* Kings that have been since in that Kingdom.

Maud Daughter of *Hen.* I. took not the *Title* of *Queen*, because she had that of *Empress* which was Higher. And she kept the *Title* of *Empress* as well after she was *Recogniz'd* by the *English*, as before.

Hen. II. her Son, cou'd not take the Title of *King*, because in his *Mother*'s time he had made a *Compromise* with K. *Stephen* to let him Enjoy the *Crown* during his Life, and was thenceforward call'd *Heir* to K. *Stephen*.

Then for the *Heirs* of *York*, they had submitted to *Hen.* IV. V. and VI. And so cou'd not take the Title of *Kings*.

And their *Children* who set up their *Claim*, after 60 Years *Possession* of the *Lancastrian* Line, took not presently that *Title* which their *Fathers* had not, in whose *Right* they *Claim'd*, but were Content to *Win* it first by the *Sword*, before they *Wore* it. Which seem'd the most Prudent Course, because the Issue of *War* is Uncertain.

And here we may Observe two things by the way, *First*, That whoever has Right to a *Crown* cannot Hurt his *Heirs* by any *Submissions* he can make.

Secondly, That *Usurpation* even for *three Score* Years together, do's not Extinguish the *Right* to the *Crown*.

But *Edw.* IV. who was the first of the House of *York* that Recover'd the *Crown*, after this long *Usurpation*, took the *Title* of *King*, when the *Earl* of *Warwick* Join'd him, even while he was out of *Possession*, and in Order to Recover his *Right*.

Queen *Mary* whose Father was *King*, took the *Royal Style* before she got into *Possession*, and while another *de Facto Queen* was upon the *Throne*.

In like Manner King *Char.* II. Assum'd the *Royal Style* from the Day of his *Father's* Death.

But ther is another thing might hinder the *Claimants* of *York* to take the Name of *Kings* before they got into *Possession*, which was the Custom of those times, wherein it was not Usual for *Kings* to take that *Style*, till they had Receiv'd the *Benediction* of the *Bishop* at their *Coronation*. As it is said, *Benedixit eum in Regem.* The Bishop *Blessed him to be a King.*

For *Kings* holding the *Crown* from *God*, thought themselves Oblig'd to Receive it from the Hand of the *Minister* of *God*.

But in those *Popish* times the *King*'s Right was not thought Compleat, till the *Church* had own'd him. This was one of *Becket*'s false Principles. See *Collier*'s *Church Hist.* p. 359. and 374. and *Hubert* Arch-Bishop of *Canterbury* his Speech to K. *John* at his *Coronation*, in *Matth. Paris.* And *Lambard* in his *Saxon Laws*, p. 142. Mentions a Letter of Pope *John*, that the *King* should *Swear* to Defend Holy Church,

Church, &c. *before he be Own'd* by the Arch-Bishops, Bishops, *&c.*

This was *Popish* Error, for tho' the *King* receives his *Crown* from the Hand of *GOD*'s *Minister*, to shew that he holds it from *GOD* alone, yet his *Right* is not from the *Minister* but from *GOD*. And the Title of *King* and all the *Regal* Power belongs to him from the time that his *Right* Commences, that is, from the Death of his *Predecessor*, not from his Actual *Possession*.

But to come to a Modern Instance now before Us, did not our present *Charles* take the *Title* of *King* of *Spain* before he was in *Possession* of a foot of it, and while *Philip* was in Quiet *Possession* of the *Whole?*

In short, Mr. *Higden*, this *Criticism* of yours Signifies nothing, for in all Times, as well before as since the Contest of *York* and *Lancaster*, whether the *Competitor* took the Name of *King* or not, it is Plain he thought he had a *Right* to make *War* upon the *Possessor* who Detain'd it from him. And so must all they think who took his Part and Fought for him. Which will be Abundantly Sufficient to Confute your *Hypothesis*, that *Possession* do's Extinguish *Right*; and that this was the *Universal* and *Receiv'd Opinion*.

And the General Compliance with the *Three Henrys* will not make out your Point. Of which I have a Word more to say. For besides the Grounds they had to think that the *Right* of *York* was Utterly Extinguish'd, by their *Submission* for so long a time, of which I spoke before.

Another Consideration in favour of our *Ancestors* in those Times, may be the Great *Power* of the *Popes* in those Days, who took upon them to Dispose of all *Crowns*, particularly that of *England*, which they once had put in Subjection to them by King *John*. And these own'd the *Three Henrys*, which must go a great way with the Generalty of their *Popish* Subjects, and they were all so then.

And this might Carry too with that *Pious* Man *Hen.* VI. who said his *Prayers*, and perhaps thought not himself an *Usurper*, because those about him Told him so, and gave him Leave to *Repent* no further than they thought fit. They carry'd him up and down, and made him Quit the *Crown*, and take it again, just as suited their Designs. For he only *Reign'd*, they *Govern'd*.

Again, both *Edw.* II. and *Rich.* II. had sign'd formal *Renunciations* of the *Crown*. And tho' this was not without *Force* upon them, yet every body might not Understand that, to whom their *Renunciations* were Proclaim'd. At least you will say, That the Case had not been Exactly the same, if None of these things before Mention'd cou'd have been Alleged, no *Resignations*, no *Submissions*, or so much as any *Imply'd* giving up of their *Rights*.

But if they thought that Notwithstanding of all these *Pleas*, yet that the *Right* cou'd not be *Defeated*, then that *Age* will be a *Precedent* of the most Inflexible *Loyalty*, which the *Usurpations* for 60 Years Continuance together, nor *Success*, nor *Prescription*, nor *Acts of Parliament*; no, nor the *Submissions* or *Resignations*

ſignations of thoſe who had the *Right* cou'd Abate! They ſaw theſe were not *Free* and *Voluntary*, therefore wou'd lay no Streſs upon them. They thought Themſelves, as well as the *Prince* Concern'd in the *Rights* of the *Crown* and its due *Succeſſion*. And therefore Contended for it, as for their own *Rights* and *Liberties*.

Therefore this Diſpute cou'd never End, till the *Right* was at laſt *Reſtor'd*, tho' they Waded through an *Hundred* Years of *Blood* for it.

And is this the Age, Sir, that you have Choſen to ſhew that *de Facto* was always thought *de Jure*, and that they never look'd further than to the *King* in *Poſſeſſion?* Whereas all theſe *Wars*, and every *Battle* that was fought, was againſt the *King* in *Poſſeſſion*, and againſt him only.

But, Sir, let me give you a Preſent *Inſtance* freſh before our Eyes. King *Auguſtus* did even Literally *Abdicate* the *Crown* of *Poland*, he Renounced the *Title*, Quit the *Kingdom*, and left them to themſelves. And *England* and *Holland* are *Guarantees* of the Treaty of *Alt Ranſted* by which he did *Abdicate*, and at his own Deſire. And *Staniſlaus* was Choſen into the Vacant *Throne*, by what they call'd the *Voice* of the *People*, and was owned by Neighbouring *Princes*, particularly by *England*. Yet all this Notwithſtanding, a Great *Party* there, even the *Crown General*, becauſe they ſaw ther was a plain *Force* upon King *Auguſtus*, did not think themſelves *Abſolv'd* from the *Allegiance* they had *Sworn* to him, even in an *Elective* Kingdom, but ſtuck to him, and having Removed the *Force*, now Re-

ceive him again as their Lawful *King*, and Reckon *Staniſlaus* an *Uſurper*. For tho' ther was a Pretended *Election* of the *People*, yet it was under the Influence of a Forreign *Prince*, with an *Army* of *Forreigners*. And King *Auguſtus* tells Us now in his *Manifeſto*, That he could not *Abdicate* without the conſent of the *States*.

(11.) You ſay, p. 87. *That whoſoever ſtands Excluded by the Legiſlative Authority, whatſoever they may have had, have now no longer any Right or Title to the Crown.*

I will not ſay of what it is Now. But I will go to that *Age* whence you bring your *Precedents*, and I will ſhew you, in the Compaſs of Half a Year, one *Parliament* Proclaiming *Edw.* IV. an *Uſurper*, and *Hen.* VI. the Lawful *King*: And another *Parliament* Proclaiming the ſame *Edward* the Lawful *King*, and *Henry* the *Uſurper*. And ſo it wou'd have been ten times a Day, if the Fate of *War* cou'd have Turn'd ſo often. For None of theſe *Competitors* ever Gain'd the *Field*, but they got a *Parliament* to Confirm their *Title*. Now, according to you, both theſe *Parliaments* were alike *Lawful*, for both were under Kings *de Facto*. And you might have *Sworn* to *Henry* and Abjur'd *Edward*, and *Sworn* to *Edward*, and Abjur'd *Henry*, both as it were in the ſame Breath! Both *Right*, and Both *Wrong! King* and *No King*, before one can Act the *Play* out! This is very like the Caſe of *Frontier Towns* (which you too Urge as a *Salvo* for *Oaths*) but why then will you ſet up any

Right

Right but that of the *Sword*? Suppose a Man shou'd get a *Crown* by the *Sword*, and Never heed a *Parliament*. Wou'd it be a good *Title*, or not? If not, then their wants Something besides *Possession* to give *Right*. But if it is a good *Title* (for it is *de Facto*) then what Signifies a *Parliament?* But *Parliaments* are so Easy to *Conquerors*, that every one will have them, to *Cajole*, and *Pump* the *People*, and make them Fancy themselves *Free!* Let the *Parliament* do the *Hard* things, and all the *Gracious* things come from the *Soveraign*. A Wise *King* will never be without a *Parliament*.

(12) But how came you to lay so much Stress upon *Parliaments*, when you put the whole *Legislative* in the *King?* You Mention the *King* and his *two Houses* of *Parliament* sometimes, but you *Prove* it as to the *King*. You say, p. 23. *The Legislative Power is in all Forms of Government Essential to the Superme Power (in a Monarchy to the Regal Power) and Inseperable from it.* Pursuant to which you Undertake to Prove in the same *Page*, *That Kings, as well by Statute Law, as Common Law, have the Legislative Power of this Realm.* And p. 22. You begin this *Chapter* saying, *Having shewn that the Legislation of Kings is own'd to be good at Common Law*—— And p. 52. you say, *That the Soveraign Authority of the English Government, as well Legislative as Executive, hath been ever Acknowledged, both by our Laws and Lawyers, to be Lodged in the King; and that the Allegiance of the Subject has been due to Him, and to Him Alone.* And p. 65. *That the Kings have ever*

been

been own'd for Legiſlators in our Conſtitution. Hence in your *Title Page* you call it the *Soveraign Authority* of the *Prince.* And the *Contents* of your *Chap.* i. are, *The Supreme Authority of the Engliſh Government reſts in the King.* In the *Contents* of *Chap.* ii. you ſlip in the *two Houſes* of *Parliament.* But then again you give the *Contents* of *Chap.* iii. The moſt Material Objections to the *Legiſlative Authority* of theſe *Kings* anſwer'd.

Now if the *Supreme* Authority be in the *King*, then can it not be *Limited* by *Parliament.* Becauſe (as you ſay) it is a *Contradiction* to ſuppoſe a *Superior* to the *Supreme*, for then were it not *Supreme.* And all *Limitations* muſt come from a *Superior.* And therefore, as you add, the *Supreme* Power muſt be both *Legiſlative* and *Executive.* And both theſe are *Eſſential* to the *Supreme Power*, and *Inſeparable* from it, and as you Expreſs it, from the *Regal* Power in a *Monarchy.* And therefore, you Obſerve, that *Allegiance* is due to the *King*, and to him *Alone.* Ther can be no Sharing of this *Supremacy.*

And from this Doctrine which you have here laid down, it was perfectly Needleſs for you to bring in the *Parliament* at all into this Cauſe. Only for *Popularity!* Wou'd you make them *Judges* over the *Supreme?* But whoever has the Power will keep it while they can. In ſhort, no *King* or *Conſtitution* whatſoever will Suffer any to *Judge* of them but themſelves. And in a *Competition* for the *Crown*, ther is Nothing elſe to be done, but every Man to ſatisfy his own *Conſcience* the beſt he can

as

as to the *Right* of the *Competitors*. But as to any *Judicial* Determination, ther can be None upon Earth. For that *Judge* wou'd be Above all the *Competitors*. And who is *Judge* among the *Gods*, but the Great *God* alone? *Parliaments* never yet Determin'd the *Right* of any *King*, till it was Determin'd to their hand by *Succeſs*. And then they follow'd it as Naturally as the *Mobb* with their *Shouts*. The *Law* do's not *Make* the *King*, but *Recognizes* him. For how can any thing *Make* its *Maker?* And *Kings* were before *Municipal Laws* or *Parliaments*, for all theſe were made by *Kings*. Therefore we muſt look for the *Tenure* of *Kings* Higher than our *Municipal Laws*. And *Divines* not *Lawyers* are the beſt *Judges* in this Caſe.

(13.) Ther is a *Natural Allegiance*, which is by the *Law* of *God*, and is Antecedent to the *Legal Allegiance*, requir'd by any *Municipal Laws*, as Lord Chief Juſtice *Coke* tells you in *Calvin*'s Caſe.

And the *Legal Allegiance* is but in Affirmance of the *Natural Allegiance*, and cannot Alter it.

This may ſerve as an Anſwer to your *Chap.* VI. p. 80. *&c.* Of the Reading of *Lawyers* upon the Import of *Seignior le Roy*. You Quote Lord *Bacon*, *Coke*, *Bridgeman*, and *Hales*: And ſay, p. 84. *There was not the leaſt Temptation to Byaſs them on this ſide* (that is, your ſide) *of the Queſtion*. But I except againſt this as to *Two* of them, that is, *Coke* and *Hales*. For *Coke* was plainly Chagrin after his Diſgrace at

at Court, when from *Lord Chief Juſtice* he was made *Sheriff* of the *County*, and took to his Motto *Prudens qui Patiens*, which was put to his *Pictures* in the Year 1629. And it is Obſerv'd of him, That as before, he Wrote High for the *Prerogative*, he Leſſen'd it as much as he Cou'd afterwards.

Beſides his Second and Third *Inſtitutes*, whence you bring your *Quotations*, are *Poſthumous*, and not Printed till long after his Death about the Year 1644, at *London*, then Engag'd in *Rebellion* againſt the *King*, and how the *Copy* might be *Alter'd* or *Interpolated* to ſerve their Turn then we cannot tell, but ther is Cauſe of Suſpicion, being Publiſh'd at that Time.

Then for *Hales*, he was a *Judge* under *Oliver*, as you may ſee in his Life by Dr. *Burnet*. And therefore ther lay, not *the leaſt Temptation* in his way, to *Palliate* and *Smooth* over a *Cauſe* wherein Himſelf had been ſo far Concern'd.

But in his large Treatiſe of the *Pleas of the Crown*, which is in *MSS.* and left to be Publiſh'd after his Death (of which what is Printed are but Minutes) he Aſſerts moſt fully the *Right* of *de Jure* againſt *de Facto*.

But it is not for fear of any thing they have ſaid, that I enter this *Caveat* againſt them.

Therefore I will look over the *Authorities* you Produce.

And firſt for my *Lord Bacon*. Let me Obſerve that he is of a Different Opinion from you as to the *Statute* 11 *Hen.* VII. for he thinks

thinks it was a *New Law*, and not in Affirmance of the *Old Law* as you ſay it is. And I am of your Opinion, as I will ſhew when I come to Conſider that *Statute* in *Section 16.*

But now as to the Point before Us. Your Quotation of Lord *Bacon*, p. 81. ſays no more than, *That it was agreeable to Reaſon of State* (at that Time, in the Reign of *Hen.* VII.) *that the Subject ſhould not enquire into the Juſtneſs of the King's Title.*

This was very Agreeable then to Reaſon of *State* (for my Lord ſpeaks now as a *States-Man*) becauſe if the *Subject* had Enquir'd into the *Title* of that *King*, they would have found it altogether Bad. But muſt *Subjects* therefore never *Enquire?* Is not your *Book* an *Enquiry* into the *Titles* of *Princes?* Muſt nothing be done to Satisfy *Conſcience?* Or have the *Subjects* no *Conſcience?* Muſt they not Enquire into the *Title* of a *Maſſaniello*, or an *Oliver*, but take all upon Content they find in *Poſſeſſion!*

As for the *Conſcience* part of the Quotation, *That whatſoever the fortune of the War was, the Subject ſhould not Suffer for his Obedience*—— No. But for his *Diſobedience* and *Rebellion.* And this has ever been thought Agreeable to good *Conſcience.*

As to the Example he brings of *David* in the Matter of the *Plague*, it makes againſt him, for *God* determin'd it quite otherwiſe. He ſpar'd the *King* and Puniſh'd the *People*, tho' it was for the *Sin* of the *King.*

And

And this affords Us an Obſervation I ſuppoſe will not be Unpleaſing to you, of the Near Relation *God* has plac'd betwixt *King* and *Subjects*, as betwixt *Parent* and *Child*; That as the *Sins* of the *Parents* are Viſited upon their *Children* to the Third and Fourth Generation, ſo are the *Sins* of *Kings* upon their *Subjects*. Tho' it is likewiſe a *Puniſhment* to thoſe *Kings* and *Parents* whoſe *Subjects* and *Children* are Deſtroy'd. But this Teaches Us the Obedience to *Kings* in a very High Degree. And that the Relation betwixt *King* and *Subject* is not to be Diſſolved barely by *Poſſeſſion*, more than that of *Parent* and *Child*. Suppoſe a Man came to Raviſh your *Mother*, and you Defend her all in your Power. But at laſt you are both overcome, and the *Uſurper* gains *Poſſeſſion*, and ſhe Atturnes to him. Wou'd you then fight for the *Poſſeſſor* againſt your *Father*, and tell him his *Right* was *Extinguiſh'd*?

The Caſe is Parallel, if the Obedience to *Kings* is as ſtrongly Enforc'd upon Us by *God*, as Obedience to *Parents*. Which I believe you will not Deny. And that *Kings* Repreſent the Perſon of *God* to Us more than our Natural *Parents*; who are not call'd *Gods*, and the *Anointed* of *God*, as *King*, are. And are themſelves Subject to *Kings*.

I come now to your Quotation from *Coke*, p. 81, 82. who ſays, That a King *de Facto* and not *de Jure* is *Seignior le Roy* within the Purview of the Statute 25 *Edw.* III. c. 2. And that a Pardon granted by a King *de Jure*, who is not alſo *de Facto*, is *Void*.

Before

Before I answer this, let me take Notice, That he makes a plain Difference betwixt a King *de Facto* and a King *de Jure*, and supposes a *King* out of *Possession* to be still King *de Jure*. Which is Directly Opposite to your *Principle*, That *Possession* do's *Extinguish* the *Right*, and that the *Dispossessed* Prince has no Manner of *Right* whatsoever, as you say, p. 87.

And now in Answer to *Coke*, I Oppose to his Authority that of the *Parliament* 1660. See their *Proclamation* Dated *May* 8 1660. wherein they Declare, *That his Majesty's Right and Title to his Crowns and Kingdoms, is, and was every way Compleated by the Death of his Most Royal Father—— Without the Ceremony or Solemnity of a Proclamation*, &c. *And that Immediately upon the Death of his Father, the Imperial Crown*, &c. *did by Inherent Birth Right, and Lawful and Undoubted Succession, Descend and Come to him, as being Lineally, Justly, and Lawfully, next Heir of the Blood Royal of this Realm.*

And as his *Right* was every way *Compleated*, tho' out of *Possession*, so he did Exercise it too, and Granted *Pardons* before his *Restoration*, which held Good, and were not *Void*, as *Coke* says. He executed one for *Treason*, while he was Abroad, He gave *Titles* of *Honour*, and did other *Regal* Acts, which never were Question'd afterwards, nor *Confirm'd*, as needing any other *Authority*. Now I say to *Coke*, That if the *Right Heir* has a Power to *Pardon* tho' *Unpossessed*, he is by Consequence *Seignior le Roy*, tho' *Unpossessed*, for

for by the *Conſtitution* none can *Pardon* but the *King*.

Your next Quotation is from the Lord Keeper *Bridgeman*, at the Tryal of the *Regicides*, where *Cook* who was a Lawyer pleaded the *Statute* 11 *Hen.* VII. But was Anſwer'd, That what he did was againſt his *King*, and that they Call'd him *King* in the *Charge* at his *Trial*, *Charles Stuart King of England.* But what ſort of a *King* was this? Was he a *King* in *Poſſeſſion?* When his *Neck* was upon the *Block* the *Executioner* call'd him his *Majeſty*. Was he a *King* then? Not *de Facto* certainly. It muſt be therefore a King *de Jure* which the Lord Keeper *Bridgeman* meant. And he paſſed *Sentence* upon theſe *Regicides* for their *Treaſon* againſt a King *de Jure* tho', then *Diſpoſſeſſed*.

The Lord Chief Juſtice *Hales* ſays, as you Quote him, p. 84. *That the Right Heir of the Crown, yet not in Poſſeſſion, is not a King within this Act.* To which I have ſpoke already. Only Obſerve that he calls the *Heir* out of *Poſſeſſion* the *Right Heir*. Whereas you allow him no *Right* at all, nor to be any *Heir* to the *Crown*.

But, Sir, as to the Opinion of *Lawyers*, you will find more againſt you, than for you. See *Calvins* Caſe. The Caſe *del Union*. And *Clark* and *Watſon*'s Caſes.

I wou'd Ask one Queſtion. During the Conteſt betwixt Queen *Mary* and the Lady *Jane*, which of them was *la Reign*, and within the Purview of the *Statute* of *Treaſons* 25 *Edw.* III. According to *Coke* and *Hales*, Queen *Mary* was then

then only the *Right Heir*, but not in *Poſſeſſion*, and ſo not within the Purview of that *Statute*. But for all this thoſe who Acted againſt her in that time were Executed for *Traitors*, and tho' they did it under the Shelter of a Queen *de Facto*.

If you ſay Neither of them was *Queen* till the Matter was Settled, then no *Treaſon* could be Committed againſt Either, for ther is no *Treaſon* but againſt the *King* or *Queen*.

The King never Dies. Therefore one of them muſt be *Queen*. If it was *Jane*, then you cannot Deny but ſhe was Queen *de Facto*. And not *in Fieri*, as you *Diſtinguiſh* it, p. 68. And I muſt mind you of that *Maxim* you Repeat ſo often, *Ubi Lex non Diſtinguit*—— That we muſt not *Diſtinguiſh* where the *Law* do's not *Diſtinguiſh*. Therefore you muſt ſhew this *Diſtinction* in the *Law*. And I believe the *Law* knows no ſuch thing as a King *in Fieri*. It muſt be *King* or *No King*, eitheir *de Facto* or *de Jure*.

But if *Mary* was *Queen*, then here is a *King* (or *Queen*) out of *Poſſeſſion*, and who never was in *Poſſeſſion*, (as Queen *Mary* never had been at that time) and yet within the Purview of the 25 *Edw.* III. Here is *de Jure* Expreſly Prefer'd to *de Facto*, and the Cauſe of *Right* Determined againſt *Poſſeſſion*. Here is the *Hereditary Succeſſion* Maintain'd againſt *Uſurpation*. Here is not only the *Abettors* of *de Facto*, but the *Queen* her ſelf *Executed* for being *de Facto*. And if *Rich.* III. had Surviv'd the Battle of *Boſworth* he had been another Example; but he was *Attainted* after his Death as

a *False Traitor*, &c. for his *de Factoſhip*, and by the Name of a King *de Facto*, and for having been ſo.

And is it not very ſtrange, Mr. *Higden*, That the *Law* (as you ſay it is) ſhould know of no other *King*, nor Allow of any other but a King *de Facto*, and ſhould Purge him of all *Defects* by the *de Facto* Deſcent of the *Crown* upon him, and Defend and Juſtify him againſt *de Jure*, nay *Extinguiſh* the *de Jure* in the *Right Heir*, and Transfer it to the *de Facto*, with the *Allegiance* of all the *Subjects*, tho' Sworn to the *Hereditary Succeſſion*, and Transfer theſe *Oaths* too to the *de Facto* againſt whom they were made: And yet after all this, ſhould *Attaint* and *Execute* theſe ſame *Princes* for being *de Facto*, and for that only? And ſay at the ſame time that the *King* can do no *Wrong*? Is ther a *Paradox* in the World, if this be not one? I leave this to your Cooler thoughts to Conſider. For if *Acts of Parliament* may be made in a *Heat*, as you ſay, and therefore not to be Regarded: May not You or I *Write* in a *Heat* too, and be apt to *Overſhoot*? And ſome *Lawyers* may be in a *Heat* too, and *Strain* the *Laws*. And whatever Kings *de Jure* are, it is Certain that *Uſurpers*, who are *Raviſhers*, are always in a *Heat*. And if they Succeed, will Force the *Laws* to Bend to their Bow. *Hen.* VI. and *Edw.* IV. *Attainted* one another, and *Annull'd* each others *Laws*, as the *Victory* turn'd. And what is the Meaning of *Lawful King* ſo often uſed in our *Laws*? For ther can be none *Unlawful*, if the *de Facto* Doctrine be true.

(14.) No

(14.) No *Uſurper* can come to the *Crown* but by *Raviſhing* the *Municipal Laws*, theſe are in his Power, and he can make them ſpeak as he pleaſes. Ther is not one Exception. And tho' you like not the *Rape*, becauſe it was againſt *Law*, yet you *Juſtify* it and the *Raviſher* too when it is done, and are for Maintaining his *Poſſeſſion* againſt the lawful *Husband*, becauſe the *Laws* are *Conquer'd*, and muſt do ſo too! If *Monmouth* had *Prevail'd*, the *Laws* wou'd have *Hang'd* thoſe who Fought againſt him: And if Another had *Miſcarry'd*, the *Laws* wou'd have *Hang'd* thoſe who Fought for him. What a *Weather-Cock* have you made *Guide* of your *Conſcience!*

If the *Laws* muſt be *Judge*, let it be when they are *Free* and not under *Force*. And ſhew me that Time if you can. Shew me that *Government* or *Conſtitution* ever yet that wou'd Suffer the *Laws* to be Pleaded againſt it? Wou'd Old *Oliver*, or any other *Oliver?* Wou'd the *Commonwealth* of *England* let you ask the *Legality* of their *Conſtitution?* So that tho' you wou'd by no Means have had any hand in the *Murder* of the *King*, or the Expulſion of his *Son* King *Char.* II. Yet you wou'd be Oblig'd, by your New *Principles*, to have Fought againſt him, and Endeavour'd to have hinder'd his *Reſtoration.*

But, Sir, ther is a Caſe nearer Home, which I think will come up to all your Poſitions. By the *Statute* 1 *Will.* and *Mary* Seſſ. 2. c. 2. And 12 *Will.* III. c. 2. "A King or Queen "who ſhall turn Papiſt, or Marry a Papiſt "ſhall be Excluded, and be for ever Unca-

" pable to Inherit, Poſſeſs, or Enjoy, the " Crown and Government of this Realm, &c. " And the People of theſe Realms ſhall be, " and are hereby Abſolved of their Allegiance, " and the ſaid Crown and Government ſhall " from time to time Deſcend to and be En- " joyed by ſuch Perſon or Perſons, being Prote- " ſtants, as ſhou'd have Inherited and Enjoyed " the ſame, in caſe the ſaid Perſon or Per- " ſons, ſo Reconcil'd, holding Communion, or " Marrying, as aforeſaid, were Naturally " Dead.

Now Suppoſe any of our *Kings* or *Queens* ſhould hereafter turn *Papiſt*, or *Marry* a *Papiſt*, I ask you, Mr. *Higden*, whether by this *Law* ſuch *King* (or *Queen*) wou'd not Forfeit his *Right* to the *Crown*, and all the *Subjects* be *Abſolv'd* of their *Allegiance?*

And then, Secondly, whether the *Law* would not make it *Treaſon* in any who took *Arms* againſt ſuch a *King*, while he kept *Poſſeſſion?* And then how ſhould he be put out of *Poſſeſſion?* The *Law* puts him out of *Poſſeſſion*, as if he *were Naturally Dead.* Yet Maintains his *Poſſeſſion*, by making it *Treaſon* to take Arms againſt him. And do you think he could not get *Judges* (ſince he had the making of them all) to Declare this to be *Law?* Take up now the Authority of *Judges* in *Revolutions*, with which you fill your Book. And if theſe *Judges* Survived till another *Revolution*, and that the *Right* came to take place, do you not think they would be Inclinable to *Palliate* and *Mollify* and put the beſt Face upon their former Practice all that they could? Would they not

Plead

Plead *de Facto*, and the 11 *Hen.* VII. *&c.* And yet do you think that the *Proteſtant Heir* had the *Right* all this while? Or would you be for the *Popiſh Poſſeſſor* againſt him? If ſo, you muſt think this a *Void Law*, or made in a *Heat*, as you ſay of others.

And you muſt not make the *Law* the Meaſure of your *Allegiance*. For here the *Law* Abſolves you from your *Allegiance* to the *Poſſeſſor*, and Transfers it to the King *de Jure*; And yet you will ſtill Stick to the *Poſſeſſor*.

Or elſe you muſt Quit your *Book* and all you have ſaid in it, and Retract the *Maxim* with which you Conclude it thus,

And to End where I began, ſince the Laws, which are the Rule of Civil Subjection, require This, that is, our *Allegiance* to the King *de Facto*,

Oportet Neminem eſſe Sapientiorem Legibus.

And will you be wiſer than this *Law*, which Determines expreſly for *de Jure* againſt *de Facto*, as much as *Law* can do?

For if a King in *Poſſeſſion* be *Irreſiſtable*, then this *Law* was made in vain. But if he may be *Reſiſted* and ſet aſide, than bare *Poſſeſſion* is no Foundation for *Legal Right*. And if ſo, the *Royal Title* and actually *Adminiſtration* of the *Government* can give him no Juſt Claim to the *Allegiance* of the *Subject*. The 11 *Hen.* VII. can do him no Service, for in the Eye of the *Law* he is not the King *for the time being*. For when the *Law* Determines his *Reign*, and Extinguiſhes his *Authority*, he has no more Pretence to the *Allegiance* of

the *Subjects*, who are by this *Law* Absolved from their *Allegiance* to him.

But if Breach of Conditions in a *King* is Sufficient to Unmake him, why should the Breach of *Loyalty* in a *Subject* be thought Sufficient to make him a *King?* But this is the *de Facto* Doctrine. For if a *Rebel* proves Succesful and Snatches the *Crown*, his *Violence* gives him a Good *Title*, and he becomes a *Legal* Monarch, according to this *Principle*. And no former *Laws* or *Constitution*, or *Acts of Parliament* can stand in his way.

But, Mr. *Higden*, you have no Regard at all to the *Constitution*, or *Acts of Parliament*, tho' you Build all upon them. For pray tell me, is ther not something *Essential* to the *Constitution* of a *Parliament?* Else what need *Qualifications*, without which, Men are *Disabled* to sit in *Parliament?* Otherwise any *Company* of *Men* may call themselves a *Parliament*, tho' called together without any Lawful *Authority*; Nay, in direct *Opposition* and in *Rebellion* against the Lawful *Authority*. And then the *Rump*, &c. were Lawful *Parliaments*. For thus you Describe their Power when once they are got into *Possession*, and say, p. 87.

" They can do any thing by Virtue of the " *Supremacy* of their Power, which cannot be " Bound by any prior *Law* or *Settlement* (for " then the *Supreme* Power, wou'd be *Superior* " to its self) cut off and Extinguish Old " *Rights*, and Create and Establish new *Legal* " *Rights* and *Titles*, not only to private In- " heritances, but to the *Crown* it self—— So " that whosoever stands Excluded by the *Le-*

" *gislative*

" *giſlative Authority*, whatſoever they might " have had, have now no longer any *Right* or " *Title* to the *Crown*.

If you ſay, That the *Legiſlative Authority* of the *Commonwealth* of *England*, was only *de Facto*, but not *de Jure*, you overthrow all you have ſaid. And if you wou'd have been for K. *Char.* II. againſt that *Commonwealth*, you wou'd have fought for *de Jure* againſt *de Facto*. But I know not whether you wou'd or not? So I will not put this upon you.

Only let me ſpeak as to your *Argument*. And there I find you put more in your *Concluſion* than was in your *Premiſes*. Your *Premiſes* ſpeak only of *Legal Rights*, whence you Infer in your *Concluſion* to *any Right* or *Title*, as if ther were no other *Right* but what we call *Legal*. Whereas the *Law* do's only *Recognize* the *Right* of the *Crown*, not *Make* it; for the *Crown* is *Prior* to the *Law*, and *Above* the *Law*, as has been ſaid. And the *Law* can take away no *Right* but what it Gives. And if it ſhou'd Ceaſe to *Recognize* the *Right* of the *Crown*, and you ſhou'd call this a taking away its *Legal Right*, it will not therefore follow, that it has no *Right* or *Title* at all. It has ſtill that *Right* which is *Prior* to the *Law*, and *Independent* of the *Law*. Even the ſame *Right* it had when it made the firſt *Law*. And againſt which if any *Law* be made, it is *Void* in the Nature of the thing, as well as ſo own'd by our *Law*, which I have before ſhew'd, p. 17, 18.

The *Supreme Power* may (as is there ſaid) *Diſſolve* it ſelf, but cannot *Limit* it ſelf. It may Alter

any Part of the *Conſtitution* which is not *Eſſential*. As a Man may Cut off an *Arm* or a *Leg*, but if he Cuts off his *Head*, he is no longer that *Man*. Thus when the *Commonwealth* Diſſolv'd *Monarchy*, it was no longer that *Conſtitution*. Therefore our *Conſtitution* cannot, as you ſay, Mr. *Higden*, *Cut off and Extinguiſh* the *Right* of the *Crown*, without a total *Diſſolution* of the *Conſtitution*. Which I ſuppoſe you will not *Adventure* to ſay, after what Dr *Drake* did ſuffer for it.

And if a *Juſt* and *Legal Conſtitution* cannot Alter ſome things without Deſtroying it ſelf, much leſs can an *Uſurped* and *Illegal Conſtitution* (ſuch as was that of the *Commonwealth* of *England*, and other *Uſurpations*) have ſuch an unbounded *Authority*, to Remove all Ancient *Land-Marks*, tho' Placed by *God* Himſelf!

(15.) In your *Chap.* V. in Anſwer to the *Act* of *Recognition* of K. *Jam.* I. You own that the *Crown* deſcended on him by *Inherent Birthright*, and *Proximity* of *Blood*. And that the *Parliament* did promiſe and think their Obedience due to him, *and to his Royal Progeny and Poſterity for Ever*. But you have not put in theſe Material Words, *being Bounden thereunto both by the Laws of God and Man*. Where by the *Laws* of *Man*, I ſuppoſe was not meant the *Municipal Laws* of *England* only, but the General *Law* of the whole Earth, in former *Ages* from the Beginning, as well as at this Day, concerning the Deſcent of *Crowns* by the *Proximity* of *Blood*. And by the *Laws* of *God*, no doubt Reference is made to the Holy *Scriptures*.

Scriptures. So that we muſt Adviſe with others beſides *Common Lawyers* in this Matter.

But you own this *Hereditary Right.* Only, ſay you, what if they ſhou'd be *Diſpoſſeſſed*, and others get in? And you think it was not enough for them to have Aſſerted this *Right*, but you ſay, p. 70. *It had been abſolutely Neceſſary for them* (the Parliament) *to have Declared and Enacted, that the Subjects ſhould never hereafter Swear or pay Allegiance to any but Hereditary Kings; that no Statutes for the time to Come ſhould be valid, but ſuch as were made by them.*

Really, Sir, this is a pretty Odd Propoſal. It is the ſame as for a *Law* to be made that ther ſhou'd be no more *Conqueſts* or *Uſurpations.* No doubt the *Laws* intended it, and were made for that Purpoſe. But to ſay that they never ſhall be, wou'd look very *Fooliſh!* Is the like done in any other Caſe? We have *Laws* againſt *Murder*, *Adultery*, *Treaſon*, &c. But do's the *Law* ſay, That ther never ſhall be any *Adulterers*, or *Robbers?* Why then ſhou'd it ſay, Ther ſhall be no more *Traitors?*

But ſuppoſe ſuch a *Law* were made, wou'd it Cure you, or have hindred you from what you dave done?

Would not that *Clauſe* be *Void* in it ſelf, to Limit the Power of after *Parliaments* from *Repealing* it? Or to ſay, That no *Statutes* ſhould be *Valid* but ſuch as were made by *de Jure?* For does not every *de Facto* call it ſelf *de Jure?* And who Dare diſpute it with *de Facto?* Would you, Sir, in the Mind you are of

of Now? Otherwise to what Purpose do you Propose it, and call that *Absolutely Necessary*, which wou'd be perfectly *Vain* and of no *Importance* in the World?

For if the *Laws* were Stuck to as the *Rule*, ther could never be any *Usurpation*, or *Rebellion*.

And if the *Law* were so Worded as you Propose, would that hinder *Rebels* and *Usurpers* to Break through it? Or others to own them when they had once gotten into *Possession?*

Will you Disown that *Possession* which is Obtained by Committing a Violence upon the *Law?* Then we shall soon have done!

And if it is Impossible for any *Rebellion* or *Usurpation* to be, without Committing a Violence upon the *Laws*, then are they not Plain enough Worded?

Can you produce any *Law* which says in Plain Words, That we ought to Submit to *Rebellion* or *Usurpation* if it Prevails? And may not I say, That this is as *Absolutely Necessary* for your Sense of the *Laws*, as you say the other is for mine?

But these are wild Fancies. The *Law* tells Us our *Duty* plain enough. And that in *Hereditary Monarchies* the *Crown* descends to the *Heirs*. And tho' the *Law* must always *Vail* to *Possession*, (because it speaks out of the Mouth of *Judges* in *Possession*) yet when the *Right* recovers, it will Punish those who Oppos'd it. This was Always done, in all the *Turns* of *York* and *Lancaster*, and in all other the like since the World began. Which shews, That

None

None of them thought *Poſſeſſion* againſt *Right* was any *Plea* at all. If that had been the *Rule*, the Diſpute of *York* and *Lancaſter* cou'd not have laſted a Day. Nay, ther cou'd never have been any ſuch *Diſpute*.

You ſay, p. 79. That the Word *Heirs* was in the *Oath* of *Allegiance* from the time of *Edw.* I. This ſhews it was Always the *Rule*. And only tells Us the *Iniquity* of thoſe *Times* whence you bring your *Precedents*. I ſee not what Advantage you can make of this.

(16) I have taken no Particular Notice of the *Statute* 11 *Hen* VII. of which you make ſo much Uſe. It is Anſwer'd in what go's before. It was made by an *Uſurper* to ſecure thoſe who fought for him. *Perkin* who pretended to be *Heir* of *York* being then in Arms againſt him. If *Perkin* had Prevail'd, it wou'd have ſignify'd little; However it was all the Security hecou'd give. *Valeat quantum*—For ther were Always ſuch *Fools* as thought an *Act of Parliament* a Great Matter on their Side. The *Regicides* pleaded this very *Act*, but it did not Availe them. No nor all thoſe neither who were under *Attainders* by *Hen.* VII. himſelf for fighting againſt him for the *King* in *Poſſeſſion*, as the Duke of *Norfolk*, the Earl of *Surrey*, &c. as I will ſhew you preſently.

Tho' you tell us, p. 47, 48. *That thoſe who fought for the King for the time being, Wanted no Act of Parliament to Indemnify them, Nor had they any.* But you ſay in the next Words, *King* Hen. *VII. indeed to Quiet their Minds, paſſed a Pardon for them under the Great Seal.*

It

It seems then their *Minds* cou'd not be *Quiet*, till they had a *Pardon* some How or Other! So that this Notion of the Absolute *Security* of fighting for a King *de Facto*, was not so Universal as you wou'd have Us believe.

I observe that *Hen.* VII. here avoids the *Scandal* of being Call'd a King *de Facto*, which always means an *Usurper* when it is Us'd in Opposition to a King *de Jure*. But he puts in the Softer Word of King *for the time being*. As we say *Mayor* or *Sheriff* for *the time being*, and that may belong either to the *Right* or the *Wrong*, tho' the Meaning is easily Understood.

Hen. VII. having Marry'd the *Heiress* of *York*, thought it now full time to put an End to that Mortal Division of the *two Houses*, which had Cost the Nation above an *Hundred* Years of *Civil War*, and as the History tells Us, spent *England* more *Blood* and *Treasure* than twice Conquering of *France*. The Great Men of the Nation were almost all *Attainted* on the One side or the Other. *Hen.* VII. wou'd not say that his own House of *Lancaster* were the *Usurpers*, but having now both *Titles* in himself, he had a Mind to take away all further Cause of Dispute, and to Indemnify those who had fought for the *King* for *the time being*, and to that End made this Healing *Act*. And with a Prospect too that his *Son*, if he outliv'd his *Mother*, had a better *Title* to the *Crown* than himself, he had therefore a Design to Secure the *Possession* of the *King* for *the time being* all that he Cou'd. And to that end put a Clause to this Act *Vacating* all after

ter *Attainders* by *Parliament* contrary to the Tenor of the *Act*, and that all such after *Acts of Parliament* should be *Utterly Void*. Which speaks not much for the *Sense* of those who made that *Act*, as if it cou'd Bind after *Parliaments*. And the last Words are, *Provided alway, That no Person or Persons shall take any Benefit or Advantage by this Act, which shall hereafter Decline from his or their said Allegiance*. Which looks as if it had only a Retrospect to Clear what was Past. But betwixt the Past and the Future *Prospect* that *Hen.* VII. had, this *Act* is perfectly Confus'd, and like a Heathen *Oracle*, may be taken in different *Meanings*, according to the different *Views* in which it may be Consider'd.

You say p. 64. That this *Act* of 11 *Hen.* VII. did not Introduce a *New Authority*, or a *New Allegiance*, but *was made only in Affirmance of what was the Law before*.

In this I agree with you. And it is the only Reasonable Sense can be put upon this *Act*. But then I am sure it go's upon *Hereditary* Right, and Allows not that bare *Possession* can Extinguish it, as I think I have shewed Sufficiently from our *Laws* before that time, as well as Asserted by all our *Laws* since. And therefore the King *for the time being* in that *Act* must Mean only the King *de Jure*, to which the *Lancastrian* Kings did Pretend, as well as those of *York*. And pursuant to this, *Rich.* III. was *Attainted* and the *Principal* Persons of his Party, 1 *Hen.* VII. And therefore he did not come under the Meaning which *Hen.* VII. Intended by a King *for the time being*, tho' he was Certainly a King *de*

Facto,

Facto, and *Hen.* VII. called him ſo (as you your ſelf have Quoted, and I have Mention'd before p. 51.) a King *in Deed* but not *of Right.*

And do you Fancy that *Hen.* VII. Meant by this *Act* to Exclude his own *Children*, ſo that if any ſhould Thruſt them out, he Bound the Subjects to Adhere to the *Uſurper* againſt his own Lawful *Heirs?* Do you Imagin this to have been his Intention, and not rather to Secure the *Crown* to his *Poſterity?* Nay did he Deſign to Arm all his Subjects againſt Himſelf, and that none ſhould Aſſiſt him, if he happen'd to be Un-horſed and another get into the Saddle?

But, Sir, you ſay, p. 74. That the King *for the time being* (meaning a King *de Facto)* with his *Parliament*, are Acknowleded to have the *Legiſlative* Power, by Kings *de Jure* and their *Parliaments* even *Since the* 1 *of K. James* I. Pray, Sir, do me the favour to let me know thoſe Kings *de Jure* ſince *Jam.* I. who *Acknowledged* this? For to be ſure you do not ſpeak without Book. And I cannot find them.

(17.) You put a Material Objection againſt the *Security* of Fighting for the *King* in *Poſſeſſion*, p. 47. in theſe Words, *That theſe Princes ſometimes Attainted ſome of the Leaders of the Oppoſite Party, for Adhering to their Rivals.* To which you ſay, *But when they did this, their Conſtant way of Proceeding againſt ſuch Perſons was, by Attainders in Parliament* ex poſt facto, *and not by Indictments in the Ordinary Courſe of Proceedings, which ſhews I think* (ſay you) *at the ſame*

ſame time, that to ſerve the King in Poſſeſſion was not a Fault, nor could be Puniſhed as ſuch, by the Laws that were then in force.

Anſ. 1. This do's not follow. For if a *King* may either *Indict* or *Attaint*, he may do which he will. Was not *Monmouth* Indictable, becauſe he was *Attainted?* Were not others in the ſame *Rebellion*, ſome *Indicted* and ſome *Attainted?*

2. This was not the *Conſtant way of Proceeding*, for many were put to Death without *Attainders*. The Duke of *Somerſet* and ſeveral other *Lords* and *Gentlemen* were put to Death, without *Attainders*, by *Edw.* IV. for fighting for *Hen.* VI. The Caſe was ſo Common on both Sides, that it is very Strange to hear you ſay this! They that Fled after *Battles*, or ſtood out in *Arms*, or were *Dead*, were *Attainted*, ther was no other way, and ſome others were ſo too. But it was far from being the *Conſtant* way.

3. Wou'd *Parliaments* Attaint Men for fighting for the *King* in *Poſſeſſion?* What Opinion have you then of *Parliaments?* Or was it ſo Common a Notion as you ſay p. 48. *That none thought he Needed a Pardon for fighting for the King in Poſſeſſion?* Many loſt their *Lives* and *Eſtates* for want of it. And for what other Purpoſe was the 11 of *Hen.* VII. made, but to Secure Men for Fighting for the *King* in *Poſſeſſion?* If no Man had ever thought ther had been any need of it, that *Statute* had never been Made. And why do you make ſo much

much Uſe of it, if you think ther is no Need of it?

You ſay, p. 47. *Thoſe who fought for the King for the time being* (you are ſpeaking of *Rich.* III.) *wanted no Act of Parliament to Indemnify them.* And yet it is Evident that the Duke of *Norfolk*, the Earl of *Surrey*, and Five or Six more Perſons of Quality were *Attainted* for Adhering to *Rich.* III. And my Lord *Bacon* ſays (*Hiſt. Hen.* VII.) that the Reſt of his Party had been in the ſame Condition but for the King's *Pardon.* And that *Hen.* VII. Choſe to Indemnify thoſe of *Richard*'s Party by his Royal *Pardon*, rather than by *Parliament*, that the *Clemency* might be wholly owing to Himſelf. But let thoſe be *Attainted* in *Parliament* whom he had no Mind to *Pardon.* There was no ill *Policy* in that. Beſides it was more *Solemn* and of more *Publick Example* than a Private *Tryal.*

But you ſay, p. 48. That they who Fought againſt *Rich.* III. for *Hen.* VII. had an *Act* of *Parliament* to Indemnify them. That was againſt another Day. For *Hen.* VII. was neither *de Jure* nor de *Facto* King, nor did Aſſume the *Royal Style* till after the Battle of *Boſworth* where *Rich.* III. was Slain. So that they did not fight ſo much as for a King *de Facto*, and therefore were very Lyable to be Queſtion'd if another *Turn* had Come.

You ſay, p. 35. That *Edw.* IV's *Daughters* fled to Sanctury to Secure their *Titles.* How could this be if *Poſſeſſion* did Extinguiſh their *Titles?* The Nation thought *Hereditary Right* a better *Title* than *Poſſeſſion*, for which Reaſon the

the Marriage of the Earl of *Richmond* (*Hen.* VII.) to *Edw.* IV's Daughter was Concerted, in Order to *Diſpoſſeſs* the Uſurper *Rich.* III. And for the ſame Reaſon *Perkin Warbeck* was ſet up againſt *Hen.* VII. And the Lord *Stanley* who had ſet the *Crown* upon his Head, loſt his own Head for ſaying, That if he beliv'd *Perkin* to be the Son of *Edw.* IV. he wou'd not draw a Sword againſt him. And many of the *Nobility* who did believe it Adhered to him. And the Lord *Bacon* Obſerves, that *Hen.* VII. Died fortunatly for himſelf, becauſe his *Son* might have ſet up his *Mother*'s Title againſt him, if he had liv'd longer.

(18.) You bring an Argument, p. 74. for *the Lawfulneſs of Submitting to a Prince, whom it was Unlawful to ſet up.* And for this you Quote *Scripture*, and the *Old Teſtament* too *Deut.* XVII. 14. The only Place except one *Text* p. 102. where you Name it in your whole Book. But what was this Caſe? It was only that of *Conqueſt*, when *Strangers* got the Rule over the *Jews*, and then, ſay you, *they Conſtantly Submitted to them.* I muſt Allow it was Generally the Cuſtom to Submit to *Conquerors.* For till Men *Submit* they are not *Conquer'd.* But this Word *Conſtant* puts you to Inconveniences. For tho' they *Conſtantly* Submitted, they as *Conſtantly* Revolted, whenever they cou'd get an Opportunity. As you may ſee in the Hiſtory of the *Judges*, and of the *Maccabees.*

But you ſay further, *That our Lord juſtify'd them* (the Jews) *in their Submiſſion to the Stran-*

ger that then Ruled over them, the Heathen Emperor Tiberius.

First as to the Submission of his *Subjects* in General. The *Roman Empire* was not then *Hereditary*. And where ther is no *Right* but *Possession*, no doubt *Possession* gives the *Right*. As you say, speaking of *Tiberius*, p. 90. *The Submission of the Romans (Such as it was) was his only Title.* Neither You nor I lay much Stress upon the *Senate*. But however he had that too, such as it was. And the *Lex Regia* whereby the *Senate* and *People* of *Rome* gave up the whole Authority of the *Roman Government* to *Augustus*, tho' it did not Descend to *Tiberius* as *Heir*, yet it did as *Successor*. And None was *Wrong'd* by his Assuming the *Government*, because None had any *Right* to it.

But now as to the Case of the *Jews* under *Tiberius*. Ther was None who *Claim'd* as *Heir* of *David*, for they all *Submitted*. So here was no *Competition*. But you say, p. 90, 91. *That the Generality of the Nation, were, in the Mean time, in Expectation, that a Prince of the Tribe of Judah would shortly break the Roman Yoke, and Restore the Kingdom to Israel.* And that *Prince* did come, and was then among them. And he too gave it up, and Commanded them to Submit to *Tiberius*, tho' He call'd Himself the *Son* of *David*. For the Time was then come, that the *Scepter* shou'd Depart from *Judah*, that is, from the *Jews* so call'd from *Judah*. And from that time to this Day the *Jews* have never had one of their own *Nation* to *Rule* over them, which they always had before,

before, tho' in *Captivity*, and *Subjection* to their *Conquerors*.

But you say, p. 91. "That our Saviour "did not Resolve the Lawfulness of their "Subjection to *Cæsar*, into his *Right* to the "Government of *Judæa*, but into his *Possession* "of it; the Coining of *Mony* and Raising of "*Taxes*, which our Saviour lays down, for "a *Sufficient Ground* of their Subjection, be-"ing no manner of Proof of the *Former*, but "an Undeniable *Sign* of the *Latter*.

To which I *Answer*, That the Coining of *Mony* and Raising of *Taxes* are indeed an Undeniable *Sign* of *Possession*, but, as you say, no Manner of Proof of *Right*, that is, in an *Hereditary* Government. But it is a full Proof of *Right* too, where ther is no other *Right* but *Possession*, which I have shew'd to be the Case here.

(19.) I have got now to your *Chap.* VII. which you Intitle, *Our Laws in this Point not Contrary to the Holy Scriptures and the Doctrine of our Church, but rather Agreeable to Both.* And here I was in Expectation that you wou'd have gon into the the *Old Testament*, where only is to be found the *Original* and *Foundation* of *Government* as to all the *Earth*, and particularly of that *Government* which *God* did Establish among the *Jews*. But you have laid this wholly Aside, and given Us only a Word of the *Jews*, when they lost their own *Government*, and were in Subjection to the *Romans*. I doubt not you had Reason for this. For then you wou'd have been Oblig'd to have taken Notice,

among many other *Exceptions* to your *Rule*, of the Flagrant *Inſtances* of *David* and *Abſalom*, of *Joaſh* and *Athaliah*, and of others, where it is Plain that *Poſſeſſion* did not give *Right*. And, keeping your Eye upon theſe *Caſes*, I deſire you wou'd *Anſwer* your own *Queſtion* as to *Providence*, which you Ask near the End of this *Chapter*, p. 94, 95. " That after the " *Divine Providence* has Placed, Permitted, at " leaſt, a Perſon to be placed in ſuch a " Station, that the Laws of the Kingdom " acknowledge his Regal Authority, and Re- " quire the Allegiance of the Subject to be " paid to him. Whether to Refuſe to Ac- " knowledge him, for our King, or to pay " Allegiance to him as ſuch, is not to Oppoſe " both *Providence* and *Law* ?

Then, Sir, you think that all who Adhered to *David*, and *Refuſed* to *Acknowledge* and pay their *Allegiance* to his Son *Abſalom*, did Oppoſe both *Providence* and *Law*. And you Approve of the *de Facto* Plea of *Huſhai*, 11 *Sam.* xvi. 18, 19. " Nay, but whom the *Lord* " and this *People* and all the Men of *Iſrael* " Chooſe, his will I be, and with him will I " abide. And again, whom ſhou'd I ſerve? " Shou'd I not ſerve in the Preſence of his " *Son* ? As I have ſerved in thy *Father*'s pre- " ſence, ſo will I be in thy Preſence.

Here was the *Lord*, that was *Providence* ! And the *Choice* of the *People*, that was *Right* ! And ſerving in the Preſence of his *Son*, that was Regard to the *Family* !

And if it be not too much trouble to you, you may Caſt your Eye upon that ſaying of the

the Prophet, *Hoſ.* viii. 4. *They have ſet up Kings but not by me; they have made Princes, and I knew it not.*

And Conclude with ii *Chr.* xxiii. 3. *Beheld, the King's Son ſhall Reign, as the Lord hath ſaid of the Sons of David.* Yet *Athaliah* had been *Seven* Years in Quiet *Poſſeſſion*, without ſo much as a *Claim* againſt her.

(20.) But you Miſs'd all this, and much more *Trouble* by Excluding the *Old Teſtament*. Having thus very Briefly *Diſpatch'd* the *Scriptures*, you come next to the *Doctrine of our Church*, p. 95. where you ſtay as ſhort a while. You give Us but one Quotation out of the *Homilies*, which is Blaming their *Popiſh Anceſtors* in the time of King *John*, for Adhering to the *Pope* againſt him, and Swearing *Allegiance* to the *Dauphine* of *France*, to whom the Rebellious *Barons* had given the *Kingdom*, Contrary to the *Oath* they had taken to King *John*. Hence you Infer (elſe you can Infer Nothing) That the Compoſers of this *Homily* did in this Conſider King *John* as an *Uſurper*, and Juſtify'd the *Oaths* taken to him as ſuch. But to my Apprehenſion they had not a bit of this in their View, but ſpoke of him here only with Relation to the *Claim* of the *Pope* and the *Dauphine* of *France*. In which Reſpect he was *Juſt* and *Lawful* and every thing againſt *Them*. And who wou'd not have fought for him againſt *Them?* And the *Oaths* they had taken to him might Juſtly have been Urg'd to thoſe who ſet up the *Pope* or the *Dauphine*, not only againſt him, but all our *Kings* and

the *Nation* it ſelf. The Diſpute betwixt him and his Nephew *Arthur* was not here Conſider'd at all. But *Arthur* had *Reſign'd*, and beſides was *Dead* before the *Barons* ſent for the *Dauphine*. And his Siſter *Eleanor* was a Priſoner in King *John*'s hands, and her Life at his Mercy every Hour. So that ther was no *Claim* made by her or for her. And the Compliers of the *Homily* might think ſhe was at that time *Dead* too. And ſo that King *John* was *Rightful* King.

In the ſame Sixth *Homily* againſt *Rebellion* ther is Mention made of the *Pope*'s having Depos'd ſeveral *Emperors* and other *Princes*, and Abſolv'd their *Subjects* from their *Allegiance*, as well as this Inſtance of King *John* in *England*. And we are not to ſuppoſe that the *Homily* meant any thing herein of what Diſpute of *Titles* ther might be in any of theſe *Countries* among *Rivals* of their own. For the *Pope*'s Claim was over all *Kings* and *Countries* whatſoever.

I ſhall only Obſerve, That this *Homily* attributes the Chief Cauſe of theſe *People*'s being drawn ſo eaſily into *Rebellion*, to their Ignorance of the Holy *Scriptures*, not of the *Year Books*. And concludes thus, *In God's Word Princes muſt learn how to Obey God, and to Govern Men: In God's Word Subjects muſt learn Obedience both to God and their Princes.*

And may I not add, better than from *States-Men* or *Lawyers?*

Therefore, Sir, I deſire that if you think fit to make any Reply to this, you wou'd give me *Quotations* out of the Holy *Scriptures*, to fortify

tifie your *Law-Cases*, for it will have more Weight towards ſatisfying *Conſcience*. And I muſt ſtill think that your *Talent* is better there than at the *Law*.

And that you may ſee how Exactly you agree with the Doctrin of the *Church* of *England*, pleaſe to Peruſe the 10th *Propoſition* of the 27 Condemn'd in the *Decretum Oxonienſe*, in the following Words; " Poſſeſſion and " Strength gives a Right to Govern. Succeſs " in a Cauſe or Enterprize proclaims it to be " Lawful and Juſt.

" To Juſtifie it is to Comply with the Will " of God, becauſe it is to follow the Conduct " of His Providence.

Hobbs, *Owen*, *Baxter*, *Jenkins*, &c. are Quoted as the Aſſertors of this Pernicious *Poſition*.

(21.) I was ſorry, Sr. to ſee you *Chap.* viii. p. 97. fall into that thread-bare *Cant* of our *Commonwealth-men*, *That the ſeveral Communities of the World were not deſign'd, as ſo many Scenes for a few Perſons to diſplay their Glory in, and all the reſt of Mankind to be only Inſtruments of their Power* &c. Thence they Infer the Lawfulneſs of *Reſiſtance*, when their *Princes* purſue not, as they think, the Ends of *Government*.

I know you Guard againſt this Conſequence, p. 99, and 100. by ſhewing that this Remedy deſtroys the Thing, that is, *Government*, by making every Man *Judge* of it. But then to what Purpoſe was this *Flouriſh*? For your *Principle* of Submitting to the *Uſurper*, only Changes the *Perſon*, the ſame *Scene* of Diſplaying *Glory*, &c. remains, and as *Uncontroulable* as the

Scene of *Right*. But with this vaſt Addition of *Encouragement* to *Rebellion* and *Uſurpation*, That if it once Succeeds, all *Crimes* and *Defects* are Purg'd, and the *Right* upon which they have *Uſurped* is *Extinguiſhed* as to the former *Rightful Owner*, and Transferr'd to the *Uſurper* and his *Heirs* for Ever. So that it is only being *Boldly Wicked*, and he is *Safe!* Whereas if he were made Liable to be Queſtion'd by the *Right*, and all Men Oblig'd in *Conſcience* to ſtand by the *Right*, it wou'd be much more Terrible to *Uſurpers*, than if they had but one *Puſh* to make for the *Whole*. And *Government* wou'd be better Secur'd. Elſe *God* and our *Forefathers* had never Eſtabliſhed *Hereditary Monarchies*. To what Purpoſe *Hereditary*, if Thruſting *One* out of his Place, Excludes the whole *Line?*

(22.) Has the *Crown*, whence all *Subjects* derive their *Rights*, has this *Fountain* of *Right* no *Right* at all in it ſelf? If a Man be Wrongfully *Diſſeis'd* of his *Eſtate*, he has a *Remedy* at *Law*. Does *Poſſeſſion* againſt *Right* give a Title to nothing but to the *Crown?* Unhappy *Government!* Which of all things ought to be beſt *Settled*, is left in the moſt *Unſettled* Condition; *Floating* like a *Cork* upon the Face of the *Waters*, his own whoever can *Snatch* it firſt, or afterwards from any other that has it! And no *Remedy* for this, or any *Puniſhment!* But the Greateſt *Reward* upon Earth! And to bind *Conſcience* too! Is it a *Sin* to *Steal?* But when I ſee a *Thief*, may I *Conſent* unto him, and be a *Partaker* with the *Adulterers?*

If

If *Poſſeſſion* gave *Right* to *Goods* or *Eſtate* among *Subjects*, we ſhou'd think our *Property* in an ill Condition. And do we think that *God* has not Secur'd the *Right* of *Kings*, of His own *Anointed*, as much as the *Right* of the Meaneſt *Peaſant*?

Is it not an Encouragement to *Steal*, to tell a Man All is his own he can Run away with; And that if he *Steal* the *Crown*, he may take it for his Pains?

If a Man *Steal* a *Groat*, is he bound to *Reſtitution*, but not if he *Steal* a whole *Kingdom?* And if he is bound to make *Reſtitution*, am I bound to aſſiſt him not to make *Reſtitution?*

If this be ſo only in the Caſe of *Kings*, then are they of all Men in the Worſt Condition. But is ther any *Exception* in the Holy *Scriptures* which Excludes *Kings* from the Common Benefit of Mankind, that they only may be *Injur'd*, and no *Reſtitution* due to them? If not, then, Sr. remember the *Rule* you Preſs ſo often, That we muſt not be *Wiſer* than the *Laws*, nor *Except* or *Diſtinguiſh* where they do not. And then you muſt make a New *Law*, and a New *Goſpel*, a New Set of *Morals* too, for *Kings* only by themſelves, to Alter the Nature of *Juſtice* as them, and New *Laws* for *England* likewiſe, for they are very Tender of the *Crown*, and give it the Preference before any *Subject* to Recover its *Rights*. It is Strange then they ſhou'd be ſo Remiſs as to its Chief-eſt *Right*, and Hang it up as a *Cruſt* for every hungry *Dog* to Leap at, and make it his own who can *Snap* it firſt!

(23.) Your laſt *Chapter* beginning at p. 100. tells us to p. 105. That the *Jews* Submitted when they were *Conquered.*

From thence to the End is concerning the Behaviour of the Primitive *Chriſtians.* But as to the Preſent Caſe, you have Clear'd it at the Beginning, where you ſay, p. 105. "We "have no Inſtance of Diſpoſſeſſed Empe- "rors claiming againſt their Rivals (except "it be that of *Maximinus Thrax* and his Son) "and the Empire not being *Hereditary*, there "could be no Claims of *Heirs.*

And you ſay *we have no certain Account* how the *Chriſtians*, in the *Earlieſt Ages of the Church* behav'd *under the Rival Emperors.* So there is an End of that. But, p. 106. you ſay, That in the 4th, 5th, and 6th Ages *We have ſeveral Inſtances of the Chriſtians becoming Subjects to New Emperors, whilſt the Diſpoſſeſſed Emperor was alive.* And giving two or three *Inſtances* of this Sort Ends your Book.

To all which I ſay, *That he who has no Right but Poſſeſſion, loſes his Right with his Poſſeſſion.*

You cannot but be ſenſible that this Caſe is very *Foreign* to that of an *Hereditary* Monarchy. And as I cannot ſee to what End it was brought, ſo it wou'd be loſt time to Examine theſe *Inſtances* which make nothing to the Purpoſe.

(24.) And now, Sr. upon the whole give me leave to Reaſon a little freely with you. When this *Topick* of *Succeſs* againſt *Right* was firſt ſet up by Dr. *Sherlock*, as the Ground of his *Converſion*, it was Generally Diſlik'd by the Beſt

Beſt *Friends* to the *Government*. No *Government* can Like it. For as it Sets them up to Day, it Pulls them down to Morrow, if the *Weather-cock* comes About. It tempts Men to *Betray* every *Government*, but makes them *Steddy* to None. This gave the *Vogue* to thoſe *Anſwers* were wrote to Dr. *Sherlock*. And indeed, Sr. the Town ſays, you have added nothing New to the Argument, only given a few more Quotations out of the *Year-Books*, which Alter nothing of the Caſe. You have Reviv'd a *Diſpute* has been now *Eighteen* Years aſleep, and brought People back to think, That the *Government* has no *Right* but *Poſſeſſion*, and that *Wrongfully* come by; And that their *Right* Determines with their *Poſſeſſion*. Which by no Means is thought any Service to the *Government*. And you are Referr'd back to thoſe *Anſwers* wrote to Dr. *Sherlock* [particularly, *The Caſe of Allegiance to a King in Poſſeſſion*. 1690. *Dr.* Sherlock's *Caſe of Allegiance Conſider'd*. 1691. *An Anſwer to Dr.* Sherlock's *Caſe of Allegiance*. 1691. *The Duty of Allegiance ſettled on its true Grounds*, &c. 1691.] which are as much an Anſwer to you as to him.

You ſay in your *Preface*, p. 2. *That you were very Free and Open in Diſcourſing with as many of your Old Friends, as were willing to talk with you upon this Head.* And ſay, *Could I not have ſolv'd their Objections, to my own Satisfaction, I ſhou'd have ſtood here; and theſe Papers, as they were never Intended for the Publick at firſt, had never ſeen the Light.*

Sr. I know nothing of all this Matter. But when you were reſolv'd to *Print*, you ſhou'd for the Satisfaction of others, have *Anſwer'd* thoſe.

thoſe *Books* of your *Old Friends* which are in *Print*, and which neither Dr. *Sherlock*, nor any for him, have yet Attempted to *Anſwer*. But, without this, to ſet up his *Hypotheſis* as a New thing, and not ſo much as to Name him, or the *Anſwers* had been made to him; but Refer to the private *Converſation* you ſay you have had with ſome Nameleſs Friends, is, Sr. by no Means Satisfactory to the Publick; which ſtill wants a *Reply* to theſe *Anſwers*, till which be done, your Work, Sr. is not over. Others ſay, That if you had Intended your own *Conviction*, you wou'd have ſtay'd a While to See what might have been ſaid even to this *Book* of yours.

But Men that Write *Paradoxes* expect not Anſwers. *Carneades* Wrote in Favour of *Injuſtice*, and another Great Man in Praiſe of *Folly*. But the *Elopements* of Exuberant *Wits*, muſt not Alter the *Nature* of things, and make *Wrong* to be *Right*, and *Right* to be *Wrong*! Or which is yet more *Monſtrous*, That *Wickedneſs* by being Exceeding *Wicked*, that is, *Accompliſhing* all its *Deſigns*, every Step againſt the *Law* of *God* and *Man*, ſhou'd by that, become Perfectly *Legal*, and *Right* too in the Sight of *God*, and Bind our *Conſcience* to *Submit* to it, and *Support* it againſt what we own was Notorious *Right* and *Truth!* And which, becauſe it is once *Overpower'd*, muſt never be *Aſſerted* or *Defended* any more! What had become of *Chriſtianity* at this Rate?

But, Sr. you have all the *Moral* World too againſt you in this *Argument*. You know what an

an Heathen *Poet* ſaid, making pretty free with their *Gods*,

Victrix Cauſa Dijs *placuit, ſed Victa* Catoni.

They wou'd not take the Deciſion of the *Gods*, that *Succeſs* cou'd give *Right*. But it is more Strange in *Chriſtianity*, which was to Overcome by *Suffering*.

The *Mahometans* Plead it in Point of *Religion*. And why not? For what is *Religion* but *Right?* And if the *Nature* of *Right* can be Alter'd by *Succeſs* in one thing, why not in another?

The *Principle* of *Succeſs* diſſolves all Notion of *Right* and *Wrong* out of the World. What *Prevails* is *Beſt!* Whence ſome have Reſolv'd all the *Authority* of *God* over us into that of *Power* only, without any Regard to *Juſtice*. But *Abraham* was not of that Opinion when he ſaid, *Shall not the Judge of all the World do Right?*

And may not I ask your little *Year Books* and a few *Statutes*, ſhould they not do *Right?* They are not the *Rule* of *Right*. But are to be *Judged* by a Seperior *Rule*, of *Reaſon*, *Juſtice*, and the *Law* of *God*. Some think *England* the *Original* of *Government* to all the *World*, and that ther were *Acts of Parliament* before the *Creation*— But it muſt be brought down, and made to Submit to thoſe *Rules* of *Government*, which *God* has given to all the Earth. Otherwiſe, it may Force my *Submiſſion*, but can never Satisfy my *Conſcience*. Which if you will be ſo Charitable to Undertake, I deſire you wou'd

wou'd give me good *Authorities* out of the Holy *Scriptures*, and let me See the *Law* of *God* in the Caſe. I will allow the *Year Books* to Determine whether your *Cow* or mine be the *Treſpaſſer*, and who ſhall make up the *Fence*. But if they talk of the *Right* of the *Crown*, or the *Nature* of *Government*, they Exceed their *Commiſſion*, and what they ſay is of no more Weight, than what any other Perſons ſhou'd offer upon the ſame Subject.

Miſtake me not, as if I thought the *Laws* of the *Land* were againſt me in this Matter. I hope I have made the Contrary appear, and that they are on my Side of the Queſtion. But I ſay, They are not the *Foundation* whence we are to Begin, nor the *Laſt Reſort* neither, by which we ought to be Determin'd, as to the *Nature* of *Government*, and the *Right* of *Crowns*. That is Reſerv'd to the *Law* of *God*, Whence all *Governments* Derive their *Authority*, and from which only *Kings* do Hold.

I will Conclude with this *Prayer*, wherein I hope you will Join with me,

That *God* wou'd Support the *Right*, and Redreſs the *Wrong*.

And give us *Grace* to be *Couragious* in *His* Holy *Fear*, and neither be *Aſham'd* nor *Afraid* to *Repent*, *Confeſs*, and *Return*, whenever we are Convinc'd of our *Error*.

SUPPLEMENT.

SUPPLEMENT.

I Put this here by way of *Supplement* to what I have said of the *Constitution*, Sect. I. N. 6, 7, 8, p. 9. to p. 17. It wou'd have been too Tedious there, and an Interruption to the Thread of the Discourse. But I think it Necessary as well for my own Vindication, as the Support of the Truth. To both which it will be a Considerable Addition, to see the same things Asserted and Justify'd by the Learned Dr. *Wake* (since Promoted to the *See* of *Lincoln*) in his *State of the Church and Clergy of England*. Printed 1703.

(1.) In which he Asserts, and comes fully in with Dr. *Brady*, That there were no *Commons* (as now Understood) in our *Parliaments* till the 49 of *Hen.* III. nor from that time till the 18 of *Edw.* I. So long they were Discontinued after their being first Admitted into *Parliament*. See *State of the Church*, p. 212. Again, p. 227. he supports Dr. *Brady* in shewing, That *Acts of Parliament* were made (particularly the *Statutes* of *Westminster*) and *Taxes* Raised upon the whole Kingdom by the *King* and *Lords* only. And that one or more *Knights* for the *Counties* were Return'd as the *King* pleas'd.

pleas'd. And p. 230. That there were no *Repreſentatives* from the *Cities* or *Burroughs* in *Parliament*, but that they *Taxed* themſelves ſeparately; as they did even after they were Summon'd to *Parliament*, the *Communities* of *Counties*, of *Cities*, and *Burroughs*, gave each for themſelves. And p. 231. That the *Biſhops* and *Clergy* Taxed themſelves, without Conjunction with the *Parliament*, and ſitting at different *Times* and *Places*. And p. 215. That the *Clergy* of each *Dioceſs* being Called by their Reſpective *Biſhops*, Taxed themſelves in their *Dioceſan Synods*, ſeparately from thoſe of other *Dioceſes*. And in the *Appendix*, p. 8. *Num.* VII. There is a *Writ* to the *Biſhop* to Tax the *Clergy* of his *Dioceſs*. And p. 7. N. vi. There is a *Writ* to the *Biſhop* of *Worceſter* to pay the 20th Part of his Goods and of all his *Villains*, and with it one to the Sheriff of the County to Levy it, *Manu forti*, if there were Occaſion. And the Reaſon given was, becauſe other *Biſhops* had done the like. And the *King* had not time (being upon his Voyage to the Holy Land) to have a particular *Parliamentum vel Tractatum vobiſcum*, a *Parliament* or *Conference* with that *Biſhop*. Of which ſays the *State of the Church*, p. 214. concerning this *Biſhop* and others in the like Caſe, *All the Ceremony that the King uſed was to ſend his Letters to them to acquaint them with what the others had done, and to deſire them to Conſent to the ſame.* And this was in the 54th of *Hen.* III. as in the *Teſte* of that *Writ*, 5 Years after the *Commons* were firſt let into *Parliament*. And none of their Conſent was had or asked to this *Tax*. It

was

was Granted by the *Biſhops* and *Lords* in *Parliament*, upon their own Lands, and the Lands of their *Villains*. And ſuch *Writs* or *Letters* from the *King* were ſent it ſeems to thoſe who were abſent, to have their Conſent likewiſe. Which was a different Method from our *Acts of Parliament* now.

The *King* did *Parliament* or *Confer* with the *Biſhops* and *Lords*. But when the *Commons* were firſt Summoned to this *Parliament* or *Colloquium* (as then called) it was not that they ſhou'd have any Share or Part in the *Colloquium*, or to *Adviſe* at all in it, but barely to *Conſent* to what the *Biſhops* and *Lords* had done, as the words of the *Writ* runs, *ad Conſentiendum*, not to *Adviſe*, as it is in the *Writ* to the *Lords*, and to have a *Colloquium* with the *King*. And the Reaſon of this ſeems to have been a Meer *Politique*, that they might Pay their Money the more freely, having firſt *Conſented* to it. But now it is Grown into a *Right*, and the *Sole Right* of the *Commons* to give *Money*, and the *Lords* cannot *Tax* even Themſelves, for all *Money Bills* muſt now Proceed from the *Commons*, and the *Lords* only *Conſent*, but can *Alter* Nothing, as it was with the *Commons* formerly. And every *Speech* now from the *Throne*, when it comes to the *Money* part, Addreſſes only to the *Commons*.

This of bringing the *Commons* firſt to *Conſent*, was the *Moderation* of the *Lords*, to the End; I ſuppoſe, that the *Commons* might not Grudge at the *Taxes* lay'd on them by the *Lords*. But it has far'd with them as with other *Politicians*, who ſee not whither things will Run,

and often have their own Cannon turn'd upon them. I will give you the Words of the *State of the Church*, that I may not Miſtake. There p. 227. you will find as follows.

" The King (*Edw.* I.) being Return'd——
" Iſſued his *Writs* for a *Parliament* to Meet.
" The Perſons called were here again *totius*
" *Regni Magnates:* The Annals of *Waverly*
" Style it a *Parliament of all the Lords*, and
" Mention not any other as either Call'd, or
" Coming to it.

" In the 18th of this King, after *Eaſter*, a
" famous *Parliament* was held at *Weſtminſter*,
" in which the *Third Statute of Weſtminſter*
" was made; and an Explication upon the
" *Statute* of *Quo Warranto*, as *Hemingford* Re-
" lates it. The *Records* agree with this Ac-
" count, and will Inform Us who were Called
" to it, and Acted in it.

" For the *Statute* of *Weſtminſter*, it is ſaid,
" that the *King*, *ad Inſtantiam Magnatum Regni*
" *ſui*, Granted, Provided and Eſtabliſh'd. c. i.
" In that *de Quo Warranto*, That the King
" of his ſpecial Grace and Affection, towards
" his *Prelates*, *Earls*, *Barons*, and *Cæteros de*
" *Regno ſuo*, Granted, *&c.* But there is ano-
" ther *Record* that will ſpeak more plainly
" in this Caſe. For on the firſt of *June*, the
" *Prelates*, *Earls*, *Barons* and *Great Men* of the
" *Kingdom*, with one Aſſent in full *Parlia-*
" *ment*, granted to the King for *Themſelves*
" and the *whole Community* of the *Kingdom*,
" forty Shillings of every *Knights Fee* for an
" Aid to Marry his *Eldeſt Daughter*, as the
" Words of the *Roll* are.

This

" This *Parliament* first met after *Hilary*, " *Anno* 1289. It Re-Assembled after *Easter*; " and on the first of *June*, Granted the Aid " I before Mentioned. Upon the 14th of " *June*, at the Request of the *Lords*, and " *Great Men* there Assembled, the King issued " out *Writs* to the *Sheriffs* of every *County*, to " order *Two* or *Three* to be Chosen for their " Respective *Counties*, and Returned up to " this *Parliament*, (which was then sitting, and " had sat so long, and done so much Business " without them) within *three Weeks* after the " Feast of St. *John Baptist*, *July* the 15th. " Before they came, the *King*, with his *Lords* " only, made the *Statutes* of *Westminster* be- " fore Mentioned; which were passed in *Par-* " *liament* the xvth of St. *John Baptist*, that is " to say, *July* 8th. The *Knights* being thus " Summoned for the several *Counties*, were " Returned accordingly; from some *Three*, " from others *Two*, as the *Sheriffs* thought " fit; Which shews this Matter not to have " been yet come to any Certain Establish- " ment. They were design'd to Represent " all the *Military Tenants* of the *Counties* in " *Capite*; and they did accordingly *Consent* " for them to a xvth, then Granted, *per* " *Archiepiscopos*, &c. by the *Archbishops*, *Bishops*, " *Abbots*, *Priors*, *Earls*, *Barons*, et *Omnes Alios* " *de Regno*; the very Style that was used " when the Body of those who held by " *Military Service* were Personally Summon- " ed, according to the *Charter* of King " *JOHN*.

This *Charter* is ſet down p. 191. and expreſly Limits the *Commons* who were to ſit in *Parliament* to thoſe only who Held of the King *in Capite*. And theſe were to be *Summoned* by the *Sheriffs*, (as the *Peers* were by the *King's Letters)* not *Choſen* by the *People*. For after Naming the *Lords*, who were to be Summon'd *Singillatim*, *per Literas Noſtras*, it is added, *Et præterea faciemus Submoneri in Generali per vice Comites et Ballivos noſtros, omnes alios qui in Capite tenent de Nobis.* This ſhews what the *Omnes alios* was, who, beſides the *Lords*, then ſat in *Parliament*.

(II.) Theſe Authorities are Deny'd by none, nor have been Attack'd by any but *James Tyrrell* Eſq; in a long *Appendix* to the *Second Part* of his *third Volume* of the *General Hiſtory of England*, Printed 1704. Wherein he Attempts to Anſwer what Sr. *Henry Spelman*, Mr. *Prynne*, Dr. *Brady* and Dr. *Wake* have Wrote upon this Subject. He owns they have Quoted the *Records* truly. Only he wou'd put another Senſe upon them. But I muſt take Notice.

1. That he is not ſo Poſitive to ſay the *Senſe* he puts upon them, is the True *Senſe* of them; but that it *May be ſo*, and *If it be* ſo, and *Perhaps* is ſo.

2. Thence he *Concludes*, That *Perhaps* by the Words *Principes*, *Proceres*, *Magnates*, *Optimates*, *Barones*, &c. Not only the *Lords*, but the *Commons* too *May be* Meant. And he muſt Mean it

it as Low as thoſe very Poor *Commons* who have *Votes* in the *Elections* for *Parliament-Men* at this Day. Elſe he cannot Maintain our Preſent *Conſtitution* of *Parliaments* to be the ſame it was from the Beginning; which is the *Point* he Labours. And it will take more than a *Perhaps* to ſhew, That theſe were Called the *Princes*, the *Great Men*, and *Barons*, and *Lords* of the Nation! If he can Confound *Words* at that Rate, his *Hiſtory* will not be very Intelligible.

But the Method he takes is to go to *Littleton*'s *Dictionary*, which he Quotes p. 77. and there tells us how many ways theſe words are *Engliſhed*. That *Principes* ſignifies not only *Princes* by Birth, but *Chief or Principal Governors or Magiſtrates*. And if you ſhould ask, where? He Explains it, *in any City, Nation, or Kingdom*. Then (ſays he) *for the Word PROCERES, it is Render'd in our Dictionaries* (and puts *Littleton*'s *Dictionary* on the Margin) *the Heads or Principal Men of any City or Commonwealth*. And ſo for the Words *Optimates* and *Magnates*, which (ſays he) Signifies not only *Noble Men*, but ſuch *Chief* and *Principal* Men as before. And if he will look the Word *Nobilis*, he will find in his *Dictionary* that it ſignifies not only *Noble* by *Birth* or *Creation*, but *Excellent*, *Famous*, *Remarkable*. And alſo a *Noble*, *Six Shillings and Eight pence*. And then we ſhall find a Great many *Nobles* in *England!* And yet many of our *Electors* not Worth *One*. And who cannot come in under the Loweſt *Senſe* that any of our *Dictionaries* give of *Principes*, *Proceres*, &c. But Mr. *Tyrrell*

Supplys this with a *Suppoſe*, and ſays *ibid. Which Terms may (I Suppoſe) as well take in the Knights Citizens and Burgeſſes, as the Inferior Tenants in Capite.* But what ſignifies all this? For the Greateſt Part of our *Electors* are no Tenants *in Capite* at all, neither *Superior* nor *Inferior.* What a Pity it is ſo much Pains ſhou'd be taken to ſo little Purpoſe!

3. But he has a Reaſon which Forces him to all this, and he begins his *Appendix* with it, p. 2. where he ſays, *But how they* (the *Under-Tenants* to the *Tenants* in *Capite*) could be ſo Obliged (that is, to have *Taxes* lay'd upon them) *Unleſs they were ſome way or other Repreſented, I can by no Means Underſtand.* This is a Foundation *Maxim* with the *Orators* for the *Power* of the *People*, and their being the *Original* of *Government*, That None can be *Taxed* but by his own Conſent. And rather than Depart from this, they will by *Princes* Mean *Coblers*, and leave no *Word* of any *Signification!* But this it ſelf will not do it. For how do they *Conſent* who have no *Votes* in the *Election* of *Parliament-Men?* And theſe are much the *Major* Number of the *People.* And ſome of them too the moſt Conſiderable for *Riches*, and moſt Beneficial to the Nation in *Trade*, &c. But if they have not a *Freehold* of *Forty Shillings* a Year, they have no *Votes.* And all they have may be Given away by Men who Clean their Shoes!

As to the Imply'd *Property* and *Authority* of thoſe who have the *Terra Firma*, do's this Reach only to the *Ter-Tenants*, or thoſe who Labour

Labour the Ground with their own Hands? But if the *Land-Lords* have a Superior *Property*, the *King* is the *Supreme Land-Lord*, for all the *Lands* are Held of Him, and are *Forfeitable* to Him. Yet these Men who Cry out against the *King* having Power to *Tax* those who Hold of Him, give to *Freeholders* of *Forty Shillings* a Year a Power to *Tax* those who Hold of them, and all the Rest of the *Nation* too who do not Hold of them! And this, by I know not what, Imply'd *Consent*, when ther is no *Consent* at all Given. But, Mr. *Tyrrell*, the *People* are *Tax'd* not by their own *Consent*, but by those who have *Authority* to *Tax* them. And it is not a Farthing Matter whether they *Consent* or not. Ther are many in *England* wou'd not pay *Taxes* now if they cou'd Help it. And if they were to be *Polled*, wou'd *Perhaps* be the *Major* Part of the Nation.

And is not the *Major* Part of the *People* the *Original* of *Government?* And must not the *Freeholders* derive their *Authority* from *Them?* How else came they by it? You must shew then *When* and *How* the *People* did Impower the *Freeholders* to *Vote* for *Them.* And that they Limited it to *Freeholds* of such a *Value*, and Excluded all the Others. And may not the *People* Recall that Power they gave to the *Freeholders*, if they Abuse it; as well as what they Entrusted with *Kings* and *Parliaments?*

Sir, I find you are at a Puzzle whether *Kings* or *Parliaments* were first? For you say in your *Preface to the Appendix*, p. 2. *That Great Council must have been before, or at least*

as Ancient as Kings themſelves. But why are you in this Doubt? For *Kings* and *Parliaments* did not Start out of the Ground both together. One muſt be before the Other. Becauſe one muſt Make the Other. Either *Kings* made *Parliaments*, or *Parliaments* made *Kings*. If the latter, then you are to ſhew that *Parliament* which made the firſt *King*. And tell us by whom it was *Called*, and by whoſe *Authority* it Sat. *&c.*

I intend not to go over Mr. *Tyrrell's Appendix*, which is a large Book by it ſelf. But all his *Anſwers* being the ſame, and within the *Topicks* I have before ſet down, I will give the Reader one Inſtance or two, by which he will know all the Reſt, as much as if had Read them all.

At the end of p. 13. he comes to Anſwer an Authority produc'd by Dr. *Brady*, where a *Tax* was Granted to the *King* by the *Magnates* and *Fideles*. Which *I ſuppoſe*, ſays he, *May be* better urged to the Contrary. Then p. 14. he plays upon the Word *Fideles*, and Proves that the Meaneſt of the *Commoners*, thoſe under the Tenants in Capite, *May be* Comprehended under the Signification of this Word, for may not a *Mean* Man be *Faithful?* And for this he Quotes the *Gloſſary*, that *Fideles* Signifies *Faithful*. But then he brings to his Aid *Walter* of *Coventry* the Hiſtorian, who Reckons the Members of this *Parliament* to Conſiſt of the *Archiepiſcopi*, *Epiſcopi Abbates*, *et Proceres Angliæ*. And with the Help of *I ſuppoſe*, he finds the Inferior *Commons* here too. For, ſays he,

" Un-

" Under the General word *Proceres* in this " Hiſtorian, and *Fideles* in the Record, *I ſup-* " *poſe* not only Tenants in *Capite* to be here " Underſtood, but their inferior Tenants, or " their Repreſentatives, are Comprehen- " ded.

Then he goes on in the ſame Page to another *Inſtance* brought by Dr. *Brady* in the 8th. of *Hen.* III. where a *Carucage* of *two Shillings* of every *Plough* throughout all *England*, was given to the *King* in *Parliament*, where were Aſſembled the *Archbiſhops*, *Biſhops*, *Earls*, *Barons*, and *Multis aliis.* " From whence " (*ſays he*) the Doctor Collects, that the *Alii* " *Multi* above Mentioned, were the *Abbots*, " *Priors*, and other *Lay-Tenants* in *Capite*: " But *I think* we *May* well underſtand theſe " Words to Extend not only to the Te- " nants in *Capite*, but to other inferior Te- " nants, by whatſoever free Service, who were " there by their Repreſentatives. For how " otherwiſe (as I ſaid before) could a gene- " ral *Carucage* upon all the Plough-Lands " throughout *England* be Legally impoſed? " Since the great *Prelates*, *Earls*, *Barons*, and " Tenants in *Capite* cou'd never Repreſent " the Tenants of ſuch *Abbots* and *Priors*, who " held their Lands in *Frank-Almoign*, and " not in *Capite*, and ſo were not Summoned " to this *Parliament*; as alſo all Tenants in " *Ancient Demeſne* and by *Socage* and *Burgage* " Tenures; and laſtly, Tenants by *Petty Ser-* " *jeantry*, and thoſe who held Lands of the " King by *Fee Farm*, paying a Certain Rent: " All which, together with their under-Te-

nants,

" nants, could never be Taxed or Rated by " thoſe who were none of their Chief Lords; " ſince upon theſe Gentlemens Principles, " whom we Oppoſe, the only Reaſon why " the Tenants in *Capite* could grant Taxes " for their Under-Tenants, was, that hold- " ing their Lands of them in Fee, they did " in ſome manner Repreſent them, and were " Bound by their Acts: They could never " Repreſent or Diſpoſe of the Eſtates of thoſe " who had no ſuch Relation; and therefore " by theſe *Multi Alii* muſt be meant other " than meer Tenants in *Capite*.

Thus Mr. *Tyrrell*. I have given his Words at Large, that he may not ſay I miſtook his Meaning. All his Argument is Built upon *Repreſenting*, that none can be *Taxed* but by their *Repreſentatives*. Whereas he muſt know, That the far Greateſt Part of the People of *England* have no *Votes* in the Choice of *Parliament-Men*, and ſo are not *Repreſented* at all. Yet they are *Taxed*.

And as for his ſaying, That People are *in ſome Manner Repreſented* by thoſe of whom they hold *in Fee*. I wou'd be Glad to know his Meaning. Do's every Man of whom I hold a piece of Land in Fee *Repreſent* me, and am I *Bound* by his *Acts*, ſo that he may Diſpoſe of me, my Life and Eſtate at his Pleaſure? If that be true, then the *King* may Diſpoſe of all the Men in the Nation who have any Land in Fee, becauſe they all Hold of Him, and He *Repreſents* them all.

And if the *Multi Alii* here, and the *Omnes Alii* in the *Charter* of King *John*, mean All thoſe

thoſe who are *Taxed*, beſides the Tenants in *Capite*, it will make a large *Army* of our *Parliament!* And if you will go to the *Dictionary* to know what *Omnes Alii* Means, it will tell you that it ſignifies *All others*, and ſo you may bring in every Man in the Nation! But can any thing be Plainer to ſhew what is meant by *All Others* here than this *Charter* expreſſes it, when it ſays, *All Others* who *hold of Us in Capite?* Yet Mr. *Tyrrell* will not have it ſo, but in this ſame place, p. 15. he Quotes Dr. *Wake*'s *State of the Church*, and the ſame Page of it where this *Charter* is Inſerted, p. 191. And Diſputes againſt it for this Reaſon, becauſe (ſays he, very Reſpectfully of the Doctor) "Had he been a little better Verſed in our "Records, he would have found that under "*Magnates*, the Knights of Shires, called *Grantz* "*de Countees* in *French*, are often Compre-"hended, as well as the *Earls* and *Barons*. No doubt ther are Great Men among the *Commoners*. And the *Knights* of *Shires* were then the *Grantz* or *Great Men* of the *County*. But what is this to the poor Creatures that Vote in our *Elections*, to the Tag Rag and Bob-Tail Shouting in *Tuttle-Fields?* You muſt make all theſe *Grantz* too, to find a Precedent for them in our *Records*.

But ther is part of the Caſe yet behind. As this *Parliament* gave a *Carucage* to the *King*, ſo He granted to His Great Men a *Scutage*, viz. of every Knights Fee, two Marks *Sterling*. To which Mr. *Tyrrell* ſays, *ibid.* p. 15. "That it had nothing to do with this *Tax*, "neither did it extend to all the Sub-Te-

"nants

" nants by Military Service, but only to ſuch " of them as had been ſpared from performing " their Services at the Siege of *Bedford-Caſtle*, " the *King* by his *Prerogative*, granted the " Lords *Writs* or *Warrants* to receive Service " from all ſuch Tenants proportionable to " the Time their Lords had been in the " King's Service, ſometimes one *Mark*, ſome- " times two or three, as Dr. *Brady* acknow- " ledges.

This Mr. *Tyrrell* thought an Anſwer to Dr. *Brady*. But whither has he brought himſelf, to ſay, That the *King* by his *Prerogative* may *Tax* the *People*, or ſuch of them as He pleaſes?

I ſuppoſe the Reader will Excuſe me not to go further with Mr. *Tyrrell*. He is all of a Piece. But it wou'd not have been Fair to Conceal the Strength of the Objections made againſt our *Conſtitution*, which Mr. *Tyrrell* has taken great Pains not to Underſtand.

Adver-

Advertiſement.

Concerning the Benefit the *Government* receives by *Jacobite* Converts.

IN all *Revolutions* ther have ever been *Diſſatisfy'd* perſons. And no Change of *Principles* becomes Univerſal at the Firſt. It muſt take Time and Patience to Wear out old *Prejudices*. And it is Natural to give *Reaſons* for ones *Change*, that he may not ſeem Byaſſed by Temporal Intereſt, when he go's to the *Stronger* Side.

Of this ſort we have had but *Two* ſince the *Revolution*, Dr. *Sherlock*, and now Mr. *Higden*. The *Firſt* Perplex'd the Cauſe, and Shook the *Principles* of the

the *Revolution*, nor has the *Latter* come up to them. And both have given Occaſion for more *Objections* againſt the *Eſtabliſhment* than We heard from the *Jacobites* before.

Mr. *Hoadly* has long Purſued the Lord Biſhop of *Exeter* for *Aſſuring the World* (as he ſays) *that her Majeſty's Title is only that of a Succeſsful Uſurpation.* Which he wou'd draw as a Conſequence from his Lordſhip's *Principle* of *Non-Reſiſtance*. But Mr. *Higden*, without the Trouble of Conſequences, openly Maintaines the *Tittle* of a *Succeſsful Uſurpation*, and gives her *Majeſty* no other *Right* or *Title* whatſoever. And to Prove this upon her, is the Buſineſs of his Book.

This is all ſhe Gets by the *Jacobite* Converts! They *Expoſe* her to *Excuſe* themſelves. It is Impoſible for a *Jacobite* to be a real *Convert!* Something ſtill Sticks with them, and they cannot Help it! They are only Dangerous when they play the *Hypocrite*. And they think the *Government* ought to Thank them for Proving it an *Uſurpation!*

Let

Advertiſement.

Let Us have no more of theſe *Converts*, at leaſt no more of their *Reaſons*. But if they will come in, let them come Modeſtly without *Reaſon!*

The *Jews* compaſſed Sea and Land to make *Proſelytes*, But they had a *Maxim*, Not to Truſt a *Convert* to the third Generation. For they made him Twofold more than themſelves.

FINIS.